राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार 28 फरवरी, 2017 / 9 फाल्गुन, 1938

हिमाचल प्रदेश सरकार

शहरी विकास विभाग

अधिसूचना

शिमला–2, 23 फरवरी, 2017

संख्याः यू0डी0–ए0(3)–13 / 2015.––हिमाचल प्रदेश के राज्यपाल की राय है कि पथ विक्रेताओं को जीविका अर्जित करने के अवसर प्रदान करने के प्रयोजन के लिए समाज के इस महत्वपूर्ण वर्ग के सम्पूर्ण हित के दृष्टिगत यह समीचीन और आवश्यक है कि पथ विक्रेता (जीविका संरक्षण और पथ विक्रय विनियमन)

अधिनियम, 2014 (2014 का अधिनियम संख्यांक 7) की धारा 38 के निबन्धनों के अनुसार एक स्कीम की विरचना की जाए ;

अतः हिमाचल प्रदेश के राज्यपाल, पथ विक्रेता (जीविका संरक्षण और पथ विक्रय विनियमन) अधिनियम, 2014 (2014 का अधिनियम संख्यांक 7) की धारा 38 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित स्कीम विरचित करते हैं, अर्थात्:––

1. **संक्षिप्त नाम और प्रारम्भ**.––(1) इस स्कीम का संक्षिप्त नाम हिमाचल प्रदेश पथ विक्रेता (जीविका संरक्षण और पथ विक्रय विनियमन) स्कीम, 2016 है।

(2) यह स्कीम राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होगी।

2. **परिभाषा.––**(1) इस स्कीम में जब तक कि सन्दर्भ से अन्यथा अपेक्षित न हो,–

(क) ''अधिनियम'' से पथ विक्रेता (जीविका संरक्षण और पथ विक्रय विनियमन) अधिनियम, 2014 (2014 का अधिनियम संख्यांक 7) अभिप्रेत है ;

(ख) ''प्रमाण–पत्र'' से अधिनियम के उपबन्धों के अनुसार किसी विशिष्ट व्यक्ति को कारबार चलाने के लिए प्राधिकरण द्वारा, प्रदान किया जाने वाला प्रमाण–पत्र अभिप्रेत है ;

(ग) ''फीस'' से स्थानीय प्राधिकरण द्वारा उपलब्ध करवाई गई सेवा के बदले में पथ विक्रेता से प्रभारित की जाने वाली फीस अभिप्रेत है;

(घ) ''प्ररूप'' से इस स्कीम से संलग्न प्ररूप अभिप्रेत है; और

(ङ) ''धारा'' से अधिनियम की धारा अभिप्रेत है।

(2) समस्त अन्य शब्दों और पदों के, जो इस स्कीम में प्रयुक्त हैं किन्तु परिभाषित नहीं हैं, वहीं अर्थ होंगे जो क्रमश अधिनियम में उनके हैं।

3. **सर्वेक्षण संचालित करने की रीति**.–(1) सम्बद्ध शहरी स्थानीय निकाय, जैसे कि, यथास्थिति, नगर निगम या नगरपालिका परिषद् या नगर पंचायत की नगर विक्रय समिति स्थल निरीक्षण द्वारा स्थल पर पथ विक्रेताओं की पहचान का सर्वेक्षण संचालित करने का अनुभव रखने वाले विशेषज्ञ अभिकरण नियोजित कर सर्वेक्षण का संचालन करवाएगी। सर्वेक्षण संचालित करने और विक्रय प्रमाण–पत्र जारी करने की सम्पूर्ण प्रक्रिया एक वर्ष की अधिकतम समय अवधि के भीतर पूर्ण की जाएगी और पश्चात्वर्ती सर्वेक्षण प्रत्येक पाँच वर्ष के पश्चात् संचालित किए जाएंगे। सर्वेक्षण के लिए निम्नलिखित पद्धतियां उपयोग में लाई जाएंगी,–

(*i*) भौगोलिक सूचना प्रणाली (जी.आई.एस.) मैपिंग;

(*ii*) डिजीटलाईज्ड फोटो जनगणना ;

(*iii*) फोटो पहचान पत्रों सहित बायोमीट्रिक ;

(*iv*) सर्वेक्षण के लिए प्रातःकालीन समय प्रातः 7:00 बजे से 10:00 बजे तक, दोपहर का समय 2:00 बजे अपरान्ह से 5:00 बजे अपरान्ह तक और सांयकालीन समय 6:00 बजे अपरान्ह से 9:00 बजे अपरान्ह तक ; और

(*v*) पथ विक्रय जोनों/क्षेत्रों में पथ विक्रेताओं की जागरूकता के लिए बाजार में इस निमित्त गठित दल द्वारा शिविर लगाकर।

(2) शहरी स्थानीय निकाय, पथ विक्रेताओं के स्थल पर सर्वेक्षण प्रारम्भ करने के नोटिस को स्थानीय दैनिक समाचार–पत्रों में अधिसूचित करवाएगी। नोटिस के साथ–साथ निम्नलिखित विनिर्दिष्ट किया जाएगा,–

(क) कैम्पस, बाजार / क्षेत्रवार, सर्वेक्षण की तारीख और समय;

(ख) शहरी स्थानीय निकायों से क्षेत्र का नोडल अधिकारी ; और

(ग) तारीख और समय, जब तक पथ विक्रेताओं के रजिस्ट्रीकरण के लिए आवेदनों कों ग्रहण किया जाएगा।

4. प्रमाण–पत्र जारी करना.––सर्वेक्षण द्वारा पहचाने गए पथ विक्रेता को नगर विक्रय समिति द्वारा सर्वेक्षण की तारीख से अधिकतम तीन मास की अवधि के भीतर प्ररूप–1 में प्रमाण पत्र जारी किया जाएगा।

5. प्रमाण–पत्र जारी करने के लिए निबन्धन और शर्तें.––उन व्यक्तियों, जो दो सर्वेक्षणों की मध्यवर्ती अवधि के दौरान जो पथ विक्रय करना चाहते हैं, सहित पथ विक्रेताओं को निम्नलिखित निबन्धनों और शर्तों के अध्यधीन, विक्रय करने का प्रमाण–पत्र जारी किया जा सकेगा,–

(*i*) पथ विक्रय करने के सिवाय उसके पास अन्य कोई जीविका का साधन नहीं है;

(*ii*) उस व्यक्ति द्वारा किसी अन्य स्थान पर कोई वैसा ही विक्रय स्थल अधियोग मे नहीं होना चाहिए ;

(*iii*) वह स्वयं या अपने कुटुम्ब के सदस्यों के माध्यम से विक्रय करेगा ;

(*iv*) उसने सर्वेक्षण संचालित करते समय या आवेदन के समय चौदह वर्ष की आयु पूर्ण कर ली हो;

(*v*) विक्रय प्रमाण–पत्र किसी भी रीति में अन्य व्यक्ति को अन्तरित / पट्टान्तरित / भाड़े पर या विक्रीत नहीं किया जाएगा। इस प्रभाव का वचनबंध पथ विक्रेता द्वारा प्ररूप–2 में नगर विक्रय समिति को प्रस्तुत किया जाएगा ;

(*vi*) विक्रय प्रमाण–पत्र पर विक्रय कार्यकलाप करने वाले व्यक्ति का फोटाग्राफ होगा और यदि विक्रय करने के स्थल पर विक्रय में शामिल उसका / उसकी पति या पत्नी या उसका आश्रित है तो उस दशा में उक्त व्यक्ति को फोटोग्राफ में सम्मिलित किया जाएगा ;

(*vii*) नए पथ विक्रेता, जो दो सर्वेक्षणों की मध्यवर्ती अवधि के दौरान पथ विक्रय करना चाहते हैं, यथास्थिति, नगर निगम, नगरपालिका परिषद् या नगर पंचायत के माध्यम से विक्रय प्रमाण–पत्र के लिए आवेदन करेंगे; और

(*viii*) यथास्थिति, नगर निगम या नगरपालिका परिषद् या नगर पंचायत द्वारा नए स्थलों की पहचान करना, नए विक्रेताओं से आवेदन स्वीकार करने के साथ–साथ नए आवेदकों को आबंटन एक बार की प्रक्रिया नही है अपितु यह एक सतत् प्रक्रिया होगी।

6. पहचान पत्र जारी करने का प्ररूप और रीति.––सम्बद्ध स्थानीय प्राधिकरण, प्ररूप–3 में पहचान पत्र जारी करेगा।

7. विक्रय प्रमाण–पत्र जारी करने के लिए मानदण्ड.––अनुसूचित जातियों, अनुसूचित जनजातियों, अन्य पिछड़े वर्गों, महिलाओं, निःशक्त व्यक्तियों, बेराजगार, शिक्षित युवा, विकलांग व्यक्ति / वरिष्ठ नागरिकों, एकल महिलाओं, महिला प्रधान गृहस्थी, महिला उद्यमकर्ताओं के स्वयं सहायता समूहों, अल्पसंख्यकों आदि के

लिए विक्रय स्थान आबंटित करते समय प्रत्येक स्थानीय प्राधिकरण / नगर विक्रय समिति निम्नलिखित क्रम में अधिमान दिया जाएगा :–

(*i*)	अनुसूचित जाति	–	5 %
(*ii*)	अनुसूचित जनजाति	–	2 %
(*iii*)	अन्य पिछड़ा वर्ग	–	3 %
(*iv*)	बेरोजगार / शिक्षित युवा	–	5 %
(*v*)	विकलांग व्यक्ति / वरिष्ठ नागरिक	–	2 %
(*vi*)	एकल महिला / महिला प्रधान गृहस्थी	–	2 %
(*vii*)	महिला उद्यमकर्ताओं के स्वयं सहायता समूह	–	3 %
(*viii*)	अल्पसंख्यक	–	2 %

टिप्पणः–आरक्षित प्रवर्गों को विक्रय स्थल आबंटित करने की दशा में एक कुटुम्ब को हिमाचल प्रदेश राज्य में केवल एक ही विक्रय स्थल आबंटित किया जाएगा।

8. विक्रय के लिए फीस.––विक्रय फीस, पथ विक्रेताओं के प्रवर्ग और बाजार की अवस्थिति के अनुसार प्रभार्य होगी। सामान्य प्रवर्ग के स्थायी विक्रेता के लिए न्यूनतम फीस केवल 500 / –रूपए (पांच सौ रूपए) और अधिकतम 1200 / –रूपए (एक हजार दो सौ रूपए) प्रति मास होगी और आरक्षित प्रवर्ग के लिए इसे 400 / –रूपए (चार सौ रूपए) से 1000 / –रूपए (एक हजार रूपए) के बीच प्रति मास प्रभारित किया जाएगा। सामान्य प्रवर्ग के अस्थायी विक्रेता के लिए न्यूनतम फीस केवल 300 / –रूपए (तीन सौ रूपए) और अधिकतम 900 / –रूपए (नौ सौ रूपए) प्रति मास होगी और आरक्षित प्रवर्गों के लिए इसे 200 / –रूपए (दो सौ रूपए) से 800 / –रूपए (आठ सौ रूपए) के बीच प्रति मास प्रभारित किया जाएगा। अन्य प्रवर्ग के विक्रेताओं, जैसे साप्ताहिक, काल सहभाजन आदि के लिए न्यूनतम फीस केवल 100 / –रूपए (एक सौ रूपए) और अधिकम केवल 600 / –रूपए (छह सौ रूपए) होगी।

9. आवश्यक प्रभारों का संदाय.––विक्रय फीस, अनुरक्षण प्रभार, विक्रय प्रमाण–पत्र के नवीकरण के लिए फीस और नियत तारीख के पश्चात् रजिस्ट्रीकरण के लिए शास्तियां और अन्य प्रभार, यथास्थिति, राष्ट्रीयकृत बैंकों और स्थानीय प्राधिकरण तथा नगर विक्रय समिति के पटलों (कांउटरज) के माध्यम से संगृहीत की जाएगी। प्रत्येक नगर विक्रय समिति का अपना एक बैंक खाता होगा। खाते की वार्षिक लेखा परीक्षा नगर विक्रय समित द्वारा की जाएगी। नगर निगम, नगरपालिका परिषद् और नगर पंचायत पथ विक्रेताओं से फीस संग्रहण को सुकर बनाने के लिए (बैंको के साथ सहभागिता से) नए तरीके इजाद करने के प्रयास करेगा / करेगी :

परन्तु विक्रय फीस के सिवाय अन्य प्रभार नगर विकय समिति द्वारा समय–समय पर निश्चित किए जाएंगे।

10. विक्रय प्रमाण–पत्र की विधिमान्यता की अवधि.––विक्रय प्रमाण–पत्र, जारी करने की तारीख से पाँच वर्ष की अवधि के लिए विधिमान्य होगा।

11. विक्रय प्रमाण–पत्र का नवीकरण.––(1) विक्रय प्रमाण पत्र, पांच वर्ष पूर्ण होने से पूर्व अपेक्षित फीस जमा (निक्षिप्त) करने के पश्चात् प्ररूप–4 में सामान्य प्रक्रिया द्वारा नवीकृत किया जाएगा। नवीकरण फीस सम्बद्ध स्थानीय प्राधिकरण या नगर विक्रय समिति द्वारा समय–समय पर निश्चित की जाएगी। जमा (निक्षिप्त) की गई फीस की रसीद से विक्रय प्रमाण–पत्र का नवीकरण सुनिश्चित होगा।

(2) नगर विक्रय समिति, उन व्यतिक्रमी पथ विक्रेताओं, जो विनिर्दिष्ट समय के भीतर विक्रय प्रमाण–पत्र का नवीकरण करने के लिए फीस जमा करने में असफल रहते हैं, की सूची प्रकाशित करेगी। नियत तारीख के पश्चात् उन पथ विक्रेताओं को, जो प्ररूप–5 में अपने विक्रय प्रमाण–पत्र को नवीकृत करने में

असफल रहते हैं, एक मास का नोटिस जारी किया जाएगा। नोटिस की अवधि के दौरान पथ विक्रेता, फीस के अतिरिक्त शास्ति के रूप में प्रतिदिन 20 / –रूपए (बीस रूपए) के संदाय के लिए दायी होगा।

(3) रजिस्ट्रीकृत पथ विक्रेता, जो खण्ड (2) के अधीन प्रथम नोटिस की तामील के पश्चात् भी अपना विक्रय प्रमाण–पत्र नवीकृत नहीं करवाता है तो उसे नगर विक्रय समिति द्वारा प्ररूप–5 मे एक और नोटिस तामिल किया जाएगा कि क्यों न उसका प्रमाण–पत्र रद्द या निलम्बित कर दिया जाए ।

12. प्रमाण–पत्र का रद्दकरण.––धारा 10 में अन्तर्विष्ट उपबन्धों के अतिरिक्त यदि कोई पथ विक्रेता निम्नलिखित किसी शर्त का भंग करता है तो नगर विक्रय समिति को, उसे सुनवाई का युक्तियुक्त अवसर प्रदान करने के पश्चात्, प्रमाण–पत्र रद्द करने की शक्ति होगी :–

(i) विक्रय अनुज्ञप्ति के अनुसार आबंटित बाजार से बाहर विक्रय करता है / बैठता है / फेरी लगाता है;

(ii) विक्रय प्रमाण–पत्र प्राप्त करने की पात्रता के लिए (न्यूनतम 14 वर्ष की) आयु का दुर्व्यपदेशन करता है ;

(iii) विक्रय स्थान के आबंटन के मानदण्डों का उल्लंघन करता है। तथापि, आबंटित 5 x 7 वर्गफुट का अधिकतम क्षेत्र विक्रय के लिए आबंटित किया जाएगा ;

(iv) अनधिकृत रूप से विक्रय स्थल को बढ़ाता है ;

(v) किसी प्रकार की स्थायी संरचना का सन्निर्माण करता है ;

(vi) विक्रय स्थल को किसी अन्य को पट्टे पर देता है / भाड़े पर देता है / बेच देता है ;

(vii) विक्रय प्रमाण–पत्र को दिए गए अतिरिक्त समय के अवसान के पश्चात् भी नवीकरण कराने में असफल रहता है ;

(viii) चौदह वर्ष की आयु से कम के किसी बाल श्रमिक (श्रमिकों) को नियोजित करता है ; और

(ix) महिला विक्रेता या किसी अन्य व्यक्ति के साथ दुर्व्यवहार का दोषी पाया जाता है।

13. स्थायी विक्रेता बाजार ओर अस्थायी विक्रेताओं से अन्यथा पथ विक्रेता बाजारों के प्रवर्ग निम्न प्रकार से हैं :–

(i) प्राकृतिक बाजार ;
(ii) साप्ताहिक बाजार ;
(iii) परम्परागत बाजार ;
(iv) त्यौहारी बाजार ;
(v) रात्रि बाजार ;
(vi) फूड कोर्टस और
(vii) समय अनुषंगी बाजार ।

14. लोक प्रयोजन की दशा मे पथ विक्रेता को पुनःस्थापन (नए स्थान पर बसाना) करने की रीति.––जब लोक प्रयोजन से सम्बन्धित कोई प्रश्न उत्पन्न होता है तो उस पर नगर विक्रय समिति के परामर्श से निम्नलिखित बिन्दुओं के दृष्टिगत विनिश्चय किया जायेगा :–

(i) नगर विक्रय समिति की सिफारिश / सहमति अनिवार्य होगी ;

(ii) पथ विक्रेता को विक्रय के लिए उसी स्थान / क्षेत्र में व्यवस्थित किया जायेगा ;

(iii) सन्निर्माण/विकास के दौरान पथ विक्रेता (ओं) को नजदीक के स्थान पर अस्थायी रूप से व्यवस्थित किया जा सकेगा ;

(iv) विकास संकर्म के पूर्ण हो जाने के पश्चात विस्थापित पथ विक्रेता(ओं) को विक्रय के लिए उसके/उनके मूल स्थान में स्थान दिया जा सकेगा।

15. पथ विक्रेता को बेदखल करने की रीति.––उस दशा में जहाँ लोक रूकावट कारित की गई है या पथ विक्रेताओं के लिए एक समान आदर्श विक्रय स्थल चिन्हित किये जाने हेतु सर्वेक्षण प्रस्तावित है, तो ऐसी स्थिति में, पथ विक्रेताओं द्धारा अनधिकृत रूप से कब्जाए गए स्थान को इस शर्त के अध्यधीन खाली करवाया जाएगा कि नगर विक्रय समिति मामले को कम से कम छह मास पूर्व समिति के समक्ष विचार विमर्श हेतु रखेगी ।

16. पथ विक्रेता की बेदखली के लिए नोटिस दिए जाने कि रीति.––अधिनियम और स्कीम के उपबन्धों के अधीन बेदखली आदेश जारी करने से पूर्व पथ विक्रेता या स्थल के कब्जाधारी को एक मास का नोटिस दिया जाएगा और यदि वह अज्ञात है या खोजा नहीं जा सका है तो नोटिस को या तो नगर विक्रय समिति कार्यालय के नोटिस बोर्ड (सूचना पटट्) पर लगाया जाएगा या प्ररूप–6 में विक्रय स्थल के किसी सहज दृश्य भाग पर चिपकाया जाएगा ।

17. पथ विक्रेता की वस्तुगत बेदखली की रीति.––(1) एक मास की नोटिस अवधी के पूर्ण हो जाने पर पथ विक्रेता शास्ती से, जो प्रत्येक दिन के लिए, जिसके दौरान ऐसा व्यतिक्रम जारी रहता है, दो सौ पचास रूपये तक की हो सकेगी, दण्डनीय होगा और जो अभिगृहित किये गए माल की कीमत से अधिक नहीं होगी।

(2) यदि पथ विक्रेता नियत अवधि के भीतर कब्जा किये गए विक्रय स्थल को खाली करने में असफल रहता है तो स्थानीय प्राधिकारी या स्थानीय प्राधिकरण द्धारा इस निमित प्राधिकृत कोई, यथास्थिति, व्यक्ति/अधिकारी, पथ विक्रेता/व्यक्ति को वस्तुतः बेदखल करने हेतु पुलिस सहायता ले सकेगा और यदि आवश्यक हो तो विक्रय स्थल/स्थान से विनश्वर/अनश्वर सहित समस्त माल को जब्त करेगा ।

18. स्थानीय प्राधिकरण द्वारा माल का अभिग्रहण.––माल के अभिग्रहण के पश्चात स्थानीय प्राधिकरण या स्थानीय प्राधिकरण द्वारा इस निमित प्राधिकृत व्यक्ति/अधिकारी खाली कराए गए स्थल/स्थान पर उपलब्ध किन्ही दो साक्षियों की उपस्थिति में उस द्वारा सम्यक रूप से हस्ताक्षरित माल की सूची प्ररूप–7 मे तैयार करेगा ।

19. पथ विक्रेताओं द्वारा अभिगृहित माल की पुनः प्राप्ति और उसके लिए प्रभार.––(1) स्थानीय प्राधिकरण या प्राधिकृत व्यक्ति/अधिकारी द्वारा अभिगृहीत माल को अधिनियम और स्कीम के उपबन्दों के अधीन पथ विक्रेताओं को उसके लिखित आवेदन पर विनश्वर माल की दशा में उसी दिन, और अनश्वर माल की दशा में, दो कार्यशील दिनों के भीतर केवल ₹ 500/= (पाँच सौ रूपए) की फीस के संदाय पर तथा विहित समय सीमा के पश्चात अभीगृहीत माल को पुनः प्राप्त करने के लिए केवल ₹ 100/– (सौ रुपए) प्रतिदिन के संदाय पर छोड़ दिया जाएगा।

(2) यदि पथ विक्रेता अभिगृहीत माल को वापिस लेने का दावा नहीं करता है तो नगर विक्रय समिति या स्थानीय प्राधिकारण का अधिकृत व्यक्ति/अधिकारी तत्काल तद्द्वारा पथ विक्रेता को प्ररूप–8 में लिखित में नोटिस देगा और नोटिस में दी गई समय सीमा, जो नोटिस की तामील की तारीख से दो दिन से कम की नहीं हो सकेगी, के अवसान के पश्चात् ऐसे माल को बेच देगा या विनश्वर माल की दशा में, यदि उपयोग में लाने योग्य न हो, उसे नष्ट कर देगा ।

(3) स्थानीय प्राधिकरण या स्थानीय प्राधिकरण द्धारा इस निमित प्राधिकृत किसी व्यक्ति/अधिकारी द्धारा अभीगृहीत किसी माल को पथ विक्रेता को तब तक नहीं लौटाया जाएगा जब तक वह ऐसे माल को हटाने या भण्डारण के लिए अनिवार्य प्रभारों को जमा करने के पश्चात उसका दावा नहीं करता और यदि वह ऐसा करने में असफल रहता है तो उसे प्ररूप–9 में ऐसी वस्तुओं के ब्यौरे तैयार करने के पश्चात सार्वजनिक

नीलामी द्वारा या ऐसी अन्य रीति में बिक्रित कर दिया जाएगा । अनिवार्य प्रभार स्थानीय प्राधिकरण / नगर विक्रय समिति द्वारा समय–समय पर विनिश्चित किये जायेंगे।

(4) अधिनियम और इस स्कीम के उपबन्धों के अधीन बिक्रित माल को हटाए जाने और भण्डारण के लिए प्रभार, विक्रय के आगमों में से संदत किये जाएंगे और अतिशेष, यदि कोई है, को पथ विक्रेता / बिक्रित माल के स्वामी को, विक्रय की तारीख से दो मास की अवधि के भीतर किये गए दावे पर, संदत किया जाएगा, और यदि उक्त अवधि के भीतर ऐसा कोई दावा नहीं किया जाता है तो इसे, यथास्थिति, स्थानीय प्राधिकरण या नगर विक्रय समिति की निधियों में जमा कर दिया जाएगा ।

20. नगर विक्रय समति के क्रियाकलापों की सामाजिक संपरीक्षा कार्यान्वित करने का प्ररूप और रीति.––

(1) नगर विक्रय समिति, अधिनियम या स्कीम के उपबंधों के अनुपालन के लिए अपेक्षित इसकी गतिविधियों की सामाजिक संपरीक्षा क्रियान्वित करने के प्रयोजन के लिए एक तीन सदस्यीय इकाई का गठन करेगी ।

(2) सामाजिक संपरीक्षा इकाई एक स्वतन्त्र निकाय होगी और निम्नलिखित से गठित होगी,–

(*i*) सामाजिक शास्त्र के क्षेत्र में एक प्रख्यात शिक्षाविद् ;

(*ii*) एक प्रख्यात सामाजिक कार्यकर्ता ; और

(*iii*) एक सेवानिवृत प्रशासक ।

(3) स्थानीय प्राधिकरण द्वारा सामाजिक संपरीक्षा इकाई को कार्यालय स्थान और उपस्करों सहित पर्याप्त सहायक अनुसचिवीय कर्मचारीवृन्द उपलब्ध करवाया जाएगा ।

(4) सामाजिक संपरीक्षा तीन वर्षों में कम से कम एक बार करवाई जाएगा। सामाजिक संपरीक्षा आयोजित करने के लिए समय सारिणी कम से कम तीन मास पहले (अग्रिम में) विनिश्चित की जाएगी ।

(5) नगर विक्रय समिति संपरीक्षा इकाई को, सामाजिक संपरीक्षा प्रक्रिया के आरम्भ होने से कम से कम पंद्रह दिन पूर्व सुसंगत सूचना के ब्यौरे उपलब्ध कराएगी। ऐसे ब्यौरों में निम्नलिखित, सम्मीलित होगा,–

(*i*) पथ विक्रेताओं के लिए अधिनियम, नियम और स्कीम के कार्यान्यन की प्रास्थिति ;

(*ii*) नगर विक्रय समिति की उन वर्षों में की गई बैठकों के कार्यवृतों का अभिलेख ;

(*iii*) समस्त रजिस्ट्रीकृत पथ विक्रेताओं का अभिलेख ;

(*iv*) अधिनियम की धारा 11 के अधीन स्थानीय प्राधिकरण के समक्ष की गई अपीलों का अभिलेख;

(*v*) अधिनियम की धारा 20 के अधीन गठित शिकायत निवारण समिति के समक्ष समस्त शिकायतों और विवादों का अभिलेख ;

(*vi*) उन वर्षों में की गई बेदखली, माल के अधिहरण (जब्ती) और पथ विक्रताओं की पुनःस्थापन की कुल संख्या का अभिलेख ; और

(*vii*) पूर्ववर्ती की गई सामाजिक संपरीक्षा रिपोर्टों, यदि कोई हों, के अभिलेख ।

21. सामाजिक संपरीक्षा इकाई की बैठक और कार्य.—(1) सामाजिक संपरीक्षा इकाई पथ विक्रताओं के साथ अधिनयम, नियमों और स्कीम के कार्यान्वयन के विभिन्न पहलुओं पर बैठकें आयोजित करेगी और सामूहिक विचार विमर्श पर बल देगी ।

(2) संपरीक्षा इकाई पथ विक्रताओं के किसी विवाधक पर या उनके समक्ष पेश आ रही समस्या की शिकायतों को लिखित में अभिलिखित करेगी ।

(3) सामाजिक संपरीक्षा प्रक्रिया के समाप्त होने पर इकाई अपने निष्कर्ष को लिखित में अभिलिखित करेगी।

(4) संपरीक्षा इकाई, नगर विक्रय समिति के कार्यालय में एक सामाजिक संपरीक्षा जनसाधारण बैठक का आयोजन करेगी । समिति के सदस्य और स्थानीय प्राधिकरण के प्रतिनीधि बैठक में भाग लेंगे। संपरीक्षा इकाई बैठक में इसके निष्कर्षों को पढ़ेगी। पथ विक्रताओं को भी प्रमाण प्रस्तुत करने हेतु प्रोत्साहित किया जाएगा और नगर विक्रय समिति, सामाजिक संपरीक्षा में चिन्हित प्रत्येक विवाधक को प्रभावित पक्ष और जनसाधारण को इस बात का स्पष्टीकरण और व्याख्यान देकर सुलझाएगी की कतिपय करवाई क्यों की गई या क्यों नहीं की गई ।

(5) संपरीक्षा इकाई, सामाजिक संपरीक्षा जन साधारण बैठक का पर्याप्त अग्रिम सार्वजनिक नोटिस देगी ।

(6) स्थानीय प्राधिकरण अन्तरों, त्रुटियों या विचलन की दशा में सामाजिक संपरीक्षा इकाई के प्रत्येक निष्कर्ष पर उत्तरदायित्व नियत करेगा और तत्काल सुधारात्मक उपाय करेगा या अनुशासनात्मक करवाई करेगा। किसी विवाद की दशा में स्थानीय प्राधिकरण (अथॉरिटी) द्वारा प्रशासनिक जाँच की जा सकेगी और यथासम्भव अल्पमत समय के भीतर, किन्तु किसी भी दशा में एक मास के अपश्चात् नहीं, तदनुसार करवाई की जा सकेगी ।

(7) सामाजिक संपरीक्षा आयोजित करने की कानूनी अपेक्षा, लेखों की सामान्य संपरीक्षा कार्यान्वित करने की किसी स्वतंत्र पहल को वंचित नहीं करेगी ।

(8) इस प्रक्रिया में प्रस्तुत की गई सामाजिक संपरीक्षा रिपोर्ट अभिलेख का एक भाग होगी और नगर विक्रय समिति द्वारा प्रतिक्रियात्मक होगी। जहां कमियों पाई जाती है वहां इस स्कीम के अनुसार तत्काल करवाई की जाएगी । कृत करवाई रिपोर्ट अभिलेख का भाग होगी ।

(9) सामाजिक संपरीक्षा आयोजित करवाने का व्यय नगर विक्रय समिति की बजटीय व्यवस्था में से उपगत होगा।

22. प्राइवेट स्थान (स्थल) को प्रतिबन्ध मुक्त विक्रय जोन, प्रतिबन्धित–विक्रय जोन और अविक्रय जोन के रूप में पुनः नामित करने के लिए शर्तें.——(1) इसे नगर विक्रय समिति द्वारा, वार्ड / क्षेत्र के पथ विक्रेताओं की कुल जनसंख्या के ढाई प्रतिशत के अनुसार निर्धारित किया जाएगा ।

(2) यदि आवेदकों की संख्या विक्रय क्षेत्रों में उपलब्ध स्थलों की संख्या से अधिक हो जाती है तो नगर विक्रय समिति, बाकी बचे आवेदकों को आवसार्रित करने हेतु सम्बद्ध स्वामी की सहमति से निजी स्थानों को प्रतिबन्ध रहित विक्रय क्षेत्रों के रूप में पुनः पदनामित करने हेतु, अधिनियम और इस स्कीम में विनिर्दिष्ट शर्तों के अनुसार कदम उठा सकेगी।

23. जनस्वास्थ्य और स्वच्छता के लिए मानदण्ड.——(1) स्थानीय प्राधिकरण पथ विक्रेताओं को स्वच्छ वातावरण बनाए रखने के आशय से अपनी अपशिष्ट सामग्री के निपटारे के लिए समुचित स्थान उपलब्ध करवाएगी।

(2) पथ विक्रेता नगरपालिका या नगरपालिका की ठोस अपशिष्ट प्रबन्धन प्रणाली द्वारा नियत अपशिष्ट निपटान मानदण्डों के अनुसार अपशिष्ट सामग्री के निपटान के लिए समुचित ढकी हुई कचरा पेटी (डस्ट–विनज) का उपयोग करेगा / करेंगे। पथ विक्रेता ठोस अपशिष्ट प्रबन्धन (एस डब्लू एम) के लिए नगरपालिका द्वारा मानदण्डों के अनुसार नियत स्वच्छता प्रभारों का संदाय भी करेगा / करेंगे।

(3) स्थानीय प्राधिकरण, जहां कहीं सम्भव हो, पथ विक्रेताओं को विद्युत / पथ–प्रकाश (स्ट्रीट लाइटस) की प्रसुविधा के साथ–साथ स्वच्छ और ताजा पानी सुनिश्चित और उपलब्ध करवाएगी।

(4) स्थानीय प्राधिकरण जनस्वास्थ्य और स्वच्छता बनाए रखने के आशय से पर्याप्त जल और विद्युत सहित शौचालय की व्यवस्था करेगा।

(5) स्थानीय प्राधिकरण द्वारा समुचित संख्या में अपशिष्ट सामग्री के निपटान के लिए कचरा पेटियों (डस्ट–विनज) की व्यवस्था की जाएगी।

(6) नगर विक्रय समिति पथ विक्रेताओं के लिए सामूहिक बीमा स्कीम प्रारम्भ कर सकेगी।

24. राज्य नोडल अधिकारी का पदनाम.––(1) राज्य नोडल अधिकारी, शहरी विकास निदेशालय के अतिरिक्त / संयुक्त निदेशक, की पंक्ति से नीचे का नहीं होगा।

(2) राज्य नोडल अधिकारी पथ विक्रेताओं की प्रास्थिति बनाए रखने के आशय से स्थानीय प्राधिकरण के साथ कम से कम एक अर्धवार्षिक बैठक करेगा।

25. पथ विक्रेताओं के सम्बन्ध में नगर विक्रय समिति, स्थानीय प्राधिकरण, योजना प्राधिकरण और राज्य नोडल अधिकारी द्वारा समुचित अभिलेखों और अन्य दस्तावेजों के अनुरक्षण की रीति.––(1) पथ विक्रेताओं के अभिलेख के अनुरक्षण के लिए शहरी विकास विभाग द्वारा एक ऑन लाईन साफ्टवेयर विकसित किया जा सकेगा।

(2) नगरपालिका प्राधिकरण ऑन–लाईन प्रक्रिया के माध्यम से सर्वेक्षित पथ विक्रेताओं का डाटा दर्ज करेगा।

(3) विक्रय प्रमाण–पत्र और पहचान पत्र को ऑन–लाईन बनाया जा सकेगा।

(4) स्थानीय प्राधिकरण की वैबसाइट पर विक्रय जोनज और पथ विक्रेताओं को प्रदर्शित किया जाएगा।

26. काल सहभाजन (शेयरिंग) आधार पर विक्रय कार्यकलाप चलाए जाने की रीति.––नगर विक्रय समिति, बाजार की आवश्यकताओं और पथ विक्रेताओं के स्थलों पर निर्भर रहते हुए काल सहभाजन आधार पर विक्रय कार्यकलापों का अवधारण करेगी। किसी महिला विक्रेता से काल सहभाजन विक्रय कार्यकलापों का आबंटन करते समय विभेद नहीं किया जाएगा।

27. निर्बन्धन मुक्त विक्रय जोनों, निर्बन्धित विक्रय जोनों और अविक्रय जोनों के रूप में विक्रय जोनों का अवधारण.––(1) नगर विक्रय समिति विशिष्ट गली या बाजार के अनुसार विक्रय स्थल के आबंटन का विनिश्चय करेगी। नगर विक्रय समितियां, अपने–अपने शहर / नगर के फेरी वालों / पथ विक्रेताओं के लिए योजनाओं को हितकर और पर्याप्त बनाने हेतु शहरों / नगरों में निर्बन्धन, अर्थात् निर्बन्धन मुक्त विक्रय जोनों, निर्बन्धित विक्रय जोनों और अविक्रय जोनों के सीमांकन को सुकर बनाने के लिए पग उठाएगी।

(2) स्थानीय प्राधिकरण / नगर विक्रय समिति विक्रेताओं (स्थायी और अस्थायी) की संख्या के लिए ऐसे प्राकृतिक बाजारों की लोकेशनज में, ले आउट प्लानज में ''पथ विक्रेता बाजार'' के रूप में अभिहित, पर्याप्त स्थान की व्यवस्था करेगा / करेगी जो उनकी सामग्री / मॉग को पूरा कर सके। यदि ऐसी लोकेशन के

लिए प्रार्थियों (उम्मीदवारों) की संख्या उपलब्ध स्थान से अधिक है तो ऐसे आधिक्य (प्रार्थियों / उम्मीदवारों) को अधीन फीस या लाटरी द्वारा और खण्ड 8 के अधीन विहित रीति में विनियमित किया जाएगा और न कि वैवेकिक अनुज्ञप्तियों के द्वारा।

(3) अस्थायी विक्रेताओं को अभिहित ''पथ विक्रेताओं के बाजार'' से बाहर भी अनुज्ञात किया जा सकेगा जब तक कि उसे अविक्रय जोन अभिहित न किया गया हो। अविक्रय जोन (जोनज) अवस्थिति और अवसर के अनुसार अधिसूचित किए जा सकते हैं। शहरों / नगरों के विकास के साथ–साथ प्रत्येक नए क्षेत्र में, पथ विक्रेताओं के लिए पर्याप्त व्यवस्था होनी चाहिए।

28. विक्रय जोनों की क्षमता और व्यापक जनगणना और सर्वेक्षण करने की रीति.––अधिनियम की धारा 3 के अधीन, वार्ड / जोन के पथ विक्रेताओं की संख्या का अढ़ाई प्रतिशत धारण क्षमता के अनुसार समायोजित किया जाएगा। किसी विक्रय जोन की धारण क्षमता विक्रय जोन के कुल क्षेत्र द्वारा विभाजित विक्रय स्थल के अनुसार होगी।

29. पुनःस्थापन (नए स्थान पर बसाना) के मानदण्ड.––पुनःस्थापन के लिए निम्नलिखित मानदण्ड होंगेः–

(*i*) जहां तक सम्भव हो पुनःस्थापन से बचना चाहिए जब तक कि प्रश्नगत भूमि के लिए स्पष्ट और अत्यावश्यक अपेक्षा न हो ;

(i) परिसम्पत्तियों की किसी भी प्रकार की हानि से बचना होगा और हानि की दशा में इसकी क्षतिपूर्ति की जाएगी ;

(*iii*) प्रभावित विक्रेताओं या उनके प्रतिनिधियों को परियोजना और पुनर्व्यवस्थापन के कार्यान्वयन में शामिल करना होगा ;

(*iv*) नगर विक्रय समिति बाजार के प्रतिनिधियों को बातचीत में शामिल करेगी ;

(*v*) पुनर्व्यवस्थापन परियोजना के कार्यान्वर्यन के अधीन परस्पर स्वीकार्य स्थल के लिए विचार किया जाना चाहिए ;

(*vi*) प्रभावित विक्रेताओं को उनकी जीविका और जीवन के स्तर को बेहतर बनाने के लिए वस्तुतः कम से कम बेदखली से पूर्व के स्तर पर लाने के लिए पुनःस्थापित किया जाएगा ।

(*vii*) नई अवसंरचना विकास परियोजनाओं द्वारा सृजित जीविका के अवसर से पात्र विस्थापित विक्रेता समायोजित किए जांएगे;

(*viii*) भूमि में हक या अन्य हित का कोई अन्तरण, ऐसी भूमि पर पथ विक्रेताओं की जीविका को प्रभावित नहीं करेगा और ऐसे किए गए किसी अन्तरण के परिणामस्वरूप कोई पुनःस्थापन अधिनियम के उपबन्धों के अनुसार किया जाएगा ;

(*ix*) राज्य तन्त्र, बलपूर्वक की गई बेदखली की प्रक्रियाओं की जांच और नियन्त्रण के लिए व्यापक उपाय करेगा ; और

(*x*) उन प्राकृतिक बाजारों को परम्परागत बाजार घोषित किया जाऐगा जहां पर पथ विक्रेताओं ने पचास से अधिक वर्षों से कारबार संचालित कर लिया है, और ऐसे बाजारों में पथ विक्रेताओं को पुनःस्थापित नहीं किया जाएगा :

परन्तु स्थानीय प्राधिकरण ऐसे बाजारों की सूची तैयार कर सकेगा और उन्हें ''परम्परागत बाजार'' घोषित करेगा। नगरपालिका निकाय, पर्यटन विभाग के सहयोग से ऐसे बाजारों को ''पर्यटन बाजारों'' के रूप में बढ़ावा देगें।

प्ररूप–1

(खण्ड 4 देखें)

पथ विक्रेता का प्रमाण–पत्र

विक्रेता का उसके / उसकी पति या पत्नी या आश्रित बालक के साथ फोटोग्राफ

विशिष्ट रजिस्ट्रीकरण संख्या.....

राज्य का नाम .....

नगरपालिका का नाम.....

विक्रय जोन का नाम.....

विक्रय स्थल का नाम.....

विक्रय का प्रवर्ग (चाहे अस्थायी / स्थायी / प्राकृतिक / साप्ताहिक आदि हो).....
.....

विक्रेता के साथ विक्रय करने में यदि उसका / उसकी पति या पत्नी या उसका आश्रित बालक अन्तर्वलित है तो उसका नाम.....

व्यक्ति (व्यक्तियों) की आयु और लिंग जिसका / जिनका फोटो है, यहां चिपकाएं.....
.....

प्रमाणित किया जाता है कि श्री..... जो आयु....., आवासीय पता.....
....., प्रवर्ग ....., का पति या पिता है यथा ..... (नगरपालिका का नाम) का रजिस्ट्रीकृत पथ विक्रेता है जैसा खण्ड 6 के अधीन उपबन्धित है।

(हस्ताक्षर)

जारी करने की तारीखः.....

.....तक विधिमान्य।

टिप्पण :– विक्रेता प्रत्येक पाँच वर्ष के पश्चात् विक्रय प्रमाण–पत्र का नवीकरण करवाएगा।

————————

प्ररूप–2

(खण्ड 5 (अ) देखें)

पथ विक्रेता द्वारा वचनबंध–पत्र के लिए आरूप

मैं , ... पत्नी / पुत्र / पुत्री श्री ..... नगर विक्रय समिति..... का रजिस्ट्रीकरण / विक्रय प्रमाण–पत्र, संख्याः....., धारक एतद्द्वारा

घोषणा करता हूं कि मुझे प्रदत्त विक्रय प्रमाण–पत्र को किसी अन्य व्यक्ति को पट्टे पर, नहीं दिया जाएगा, भाड़े पर नहीं दिया जाएगा या विक्रीत नहीं किया जाएगा।

मैं, यह भी घोषणा करता / करती हूं कि मैं किसी अन्य कारबार में नहीं लगा हूं। न ही किसी अन्य विक्रय स्थल से विक्रय कर रहा हूं । और न ही किसी संगठन के साथ नियोजित हूं।

विक्रेता का नाम और हस्ताक्षर .....

रजिस्ट्रीकरण / विक्रय प्रमाण–पत्र संख्याः .....

तारीखः

स्थानः

(विक्रेता के हस्ताक्षर)

————————

प्ररूप–3

(खण्ड 6 देखें)

पहचान पत्र

<table>
<tr><th colspan="2">नगरपालिका का नाम</th></tr>
<tr><td>विशिष्ट रजिस्ट्रीकरण संख्या.....</td><td>पिता / पति का नाम .....</td></tr>
<tr><td rowspan="5">विक्रेता की फोटो चिपकाएं</td><td>विक्रय का प्रवर्ग.....</td></tr>
<tr><td>नगरपालिका वार्ड / विक्रय जोन.....</td></tr>
<tr><td>विक्रय स्थल का, पता / अवस्थिति.....</td></tr>
<tr><td>आवासीय पता.....</td></tr>
<tr><td>पुलिस थाना.....</td></tr>
<tr><td>नाम.....
आयु.....
लिंग.....</td><td>हस्ताक्षर.....</td></tr>
<tr><td>दूरभाष नम्बर .....</td><td></td></tr>
<tr><td>जारी करने की तारीख.....</td><td>सम्बद्ध शहरी स्थानीय निकाय का आयुक्त / कार्यकारी अधिकारी / सचिव .....
.....</td></tr>
</table>

प्ररूप–4

(खण्ड 11 (1) देखें)

पथ विक्रता प्रमाण–पत्र के नवीकरण हेतु आवेदन

(इस प्ररूप को स्पष्ट अक्षरों में भरा जाना है)

आवदेक का नाम.....

(उपनाम पहले)

पिता का नाम .....

विशिष्ट रजिस्ट्रीकरण संख्या.....

आवासीय पता.....

डाक पता.....

मैं निम्नानुसार, अपने पथ विक्रेता प्रमाण–पत्र के नवीकरण हेतु आवेदन करना चाहता / चाहती हूँ:

(1) अन्तर्गत आने वाले क्षेत्र–
.....
.....

(2) माल की निम्नलिखित श्रेणी का व्यापार कर रहा / रही हूँ.....
.....
.....

तारीखः.....

आवेदक के हस्ताक्षर.....

केवल कार्यालय प्रयोग हेतु
तारीख, जिसको आवेदन प्राप्त किया गया.....

आवेदन के अनुमोदन / अस्वीकार करने की तारीख.....

अधिकारी के, मुहर सहित, हस्ताक्षर।

————————

प्ररूप–5

(खण्ड 11 (2) और (3) देखें)

पथ विक्रेता के प्रमाण–पत्र के नवीकरण के लिए नोटिस

विक्रेता का नाम .....

पिता का नाम .....

विशिष्ट रजिस्ट्रीकरण संख्याः .....

विक्रय स्थल की अवस्थिति .....

आवासीय पता .....

पहले जारी किए गए नोटिस की .....

तारीख

पत्राचार हेतु पताः .....

नवीकरण न कराने के कारण .....

तारीख अधिकारी के, मुहर सहित, हस्ताक्षर।

महत्वपूर्ण अनुदेशः

(1) पथ विक्रेता को विक्रय प्रमाण–पत्र के नवीकरण हेतु एक मास के नोटिस की तामील करवाई जाएगी ।

(2) एक मास का नोटिस देने के पश्चात् यदि वह विक्रय प्रमाण–पत्र नवीकृत करने में असफल रहता है तो उसे नगर विक्रय समिति द्वारा एक और नोटिस तामील किया जाएगा कि क्यों न उसका प्रमाण–पत्र रद्द या निलम्बित कर दिया जाए ।

————————

प्ररूप–6

(खण्ड 16 देखें)

पथ विक्रेता की बेदखली का नोटिस

विक्रेता का नाम .....
(उपनाम पहले)

पिता का नाम .....

विशिष्ट रजिस्ट्रीकरण संख्याः .....

विक्रय स्थल की अवस्थिति .....

आवासीय पता .....

डाक पता .....

बेदखली के कारण .....

तारीख अधिकारी के, मुहर सहित, हस्ताक्षर।

महत्वपूर्ण अनुदेशः

(1) पथ विक्रेता या स्थल के अधिभोगी को एक मास के नोटिस की तामील करवाई जाएगी।

(2) यदि वह अज्ञात व्यक्ति है तो नोटिस को नगर विक्रय समिति के सूचना पट पर प्रदर्शित किया जाएगा।

(3) एक मास के नोटिस की तामील करने के पश्चात् भी यदि वह विक्रय स्थल को खाली करने में असफल रहता है तो वह प्रतिदिन के लिए दो सौ पचास रूपए तक की शास्ति से दण्डनीय होगा।

(4) जहां नोटिस और जुर्माना अधिरोपित करने पर भी ऐसा अननुपालन जारी रहता है तो, यथास्थिति, नगर विक्रय समिति या प्राधिकृत अधिकारी पथ विक्रेता को हटाने के लिए पुलिस की सहायता ले सकेगा।

प्ररूप–7

(खण्ड 18 देखें)

अभिगृहीत (जब्त) माल की सूची

1. व्यक्ति का नाम और पता जिससे माल अभिगृहीत किया गया है.....
.....

2. विशिष्ट रजिस्ट्रीकरण संख्या .....

3. तारीख और समय सहित अभिग्रहण का स्थान .....
.....

4. अभिगृहीत माल के ब्यौरे .....

   (क) प्रत्येक माल का विवरण.....

5. उस व्यक्ति का नाम और पता जिसकी अभिरक्षा में अभिगृहीत सम्पत्ति (माल) रखी गई है.....
.....

6. अभिरक्षक के हस्ताक्षर .....

7. अभिगृहीत माल की लगभग कीमत .....

8. टिप्पणियां.....
.....

9. हस्ताक्षर सहित साक्षियों के नाम और उनका पताः

   (1) .....
   .....

   (2) .....
   .....

तारीख :

माल अभिगृहीत करने वाले
अधिकारी / कर्मचारी के पूरे नाम सहित
हस्ताक्षर
पदनाम और पता

———————

प्ररूप–8

(खण्ड 19 (2) देखें)

अभिगृहीत (जब्त) माल की पुनः प्राप्ति के लिए नोटिस

1. उस व्यक्ति का नाम और पता जिससे माल अभिगृहीत किया गया है.....
.....

2. अभिगृहीत माल के लिए दूसरे दावेदार का नाम और पता.....
.....

3. उस व्यक्ति का नाम और पता जिसकी अभिरक्षा में अभिगृहीत सम्पत्ति रखी गई है .....
.....

4 तारीख और समय सहित अभिग्रहण का स्थान .....
.....

5. अभिगृहीत माल के ब्यौरे.....

6. अभिगृहीत माल की लगभग कीमत .....
.....

7. टिप्पणियां.....

तारीखः

माल अभिगृहीत करने वाले
अधिकारी / कर्मचारी के पूरे नाम सहित
हस्ताक्षर
पदनाम और पता

———————

प्ररूप–9

(खण्ड 19 (3) देखें)

नीलामी के लिए रखी गई वस्तुओं का ब्यौरा

1. उस व्यक्ति का नाम और पता जिससे वस्तुएं अभिगृहीत की गई हैं.....
.....

2. अभिरक्षक का नाम.....

3. नीलामी की तारीख और स्थान.....
.....

4. वस्तुओं / माल के ब्यौरे.....

5. लगभग कीमत .....

6. नीलामी की रकम.....

7. वस्तुओं / माल के अभिग्रहण के विरूद्ध समायोजित व्यय की रकम.....

8. प्रतिदेय रकम.....

9 साक्षीः .....

1.....
2.....

अधिकारी के, मुहर सहित,
हस्ताक्षर
पदनाम ओर पता

आदेश द्वारा,
मनीषा नंदा,
अतिरिक्त मुख्य सचिव (शहरी विकास)।

[Authoritative English text of this Department Notification No. UD-A(3)-13/2015 Dated 23/02/2017 as required under clause (3) of article 348 of the constitution of India.]

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2, *the* 23rd *February,* 2017

No. UD-A(3)-13/2015.—WHEREAS, the Governor of Himachal Pradesh is of the opinion that for the purpose of providing an opportunity to the street vendors to earn livelihood, it is expedient and necessary that a scheme be framed in terms of section 38 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Act No. 7 of 2014), Keeping in view the overall interest of this important section of society;

NOW,THEREFORE, in exercise of the powers conferred by section 38 of the Street vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Act No. 7 of 2014), the Governor, Himachal Pradesh, is pleased to frame the following Scheme, namely:-

1. Short title and commencement.—(1) This Scheme may be called the Himachal Pradesh Street Vendors (Protection of Livelihood and Regulation of Street Vending) Scheme, 2016.

(2) It shall come into force from the date of its Publication in the Rajpatra, Himachal Pradesh.

2. Definition.—(1) In this Scheme, unless the context otherwise requires,—

(*a*) "Act" means the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act , 2014 (Act No. 7 of 2014);

(*b*) "Certificate" means a certificate to be granted by the authority to a particular person to run business as per provisions of the Act;

(*c*) "Fees" means fee chargeable from the street vendor in lieu of services provided by the local authority ;

(*d*) "Form" means Form appended to this Scheme ; and

(*e*) "section" means the section of the Act.

(2) All other words and expression used in this Scheme but not defined herein shall have the same meanings respectively as assigned to them in the Act.

3. The manner of conducting survey.—(1) The Town Vending Committee of the concerned Urban Local Body such as Municipal Corporation or Municipal Council or Nagar Panchayat, as the case may be, shall conduct the survey after engaging expert agency having experience of conducting survey to identify street vendors on the spot by spot verification. The whole process for conducting the survey and issuance of vending certificate shall be completed within maximum time period of one year and subsequent surveys shall be conducted after every five years. The methods which shall be used for survey are,—

(*i*) Geographic Information System (GIS) mapping ;

(*ii*) Digitalized photo census;

(*iii*) Bio-metric alongwith photo Identity Cards;

(*iv*) The timing for survey shall be morning time from 7AM to 10 AM, afternoon time from 2 PM to 5 PM and evening time from 6 PM to 9 PM; and

(*v*) Holding camps by the team constituted in this behalf in the market for awareness of street vendors in vending zone/ areas.

(2) The Urban Local Body shall notify in local dailies, the notice of commencement of on the spot survey of the Street Vendors. The notice shall inter-alia specify,-

(*a*) Camps, market/ area-wise, date and time of survey;

(*b*) Nodal Officer of the area from Urban Local Bodies; and

(*c*) Date and time upto which the applications for registration of the Street Vendors shall be entertained.

4. Issuance of certificate.—The street vendor identified in the survey shall be issued certificate by the Town Vending Committee within a maximum period of three months from the date of survey in Form-1.

5. The term and conditions for issuance of certificate.—The street vendors including those persons who wish to carry on street vending during the intervening period of two surveys may be issued certificate of vending subject to the following terms and conditions,-

(*i*) he should not have any other means of livelihood except for street vending ;

(*ii*) he should not have any parallel vending site in any other place occupied by the same person;

(*iii*) he shall carry on the vending by himself or through family members ;

(*iv*) he should have completed the age of 14 years at the time of conducting survey or making application ;

(*v*) the certificate of vending shall not be transferred/leased/rented or sold to other in any manner. An undertaking to this effect shall be submitted by the street vendor to the Town Vending Committee in Form -2.

(*vi*) the certificate of vending shall have a photograph of the person carrying on vending activity and in case of spouse or dependent involved in vending at vending site, in such situation the said person shall be covered in that photograph ;

(*vii*) new street vendors, who wish to carry on street vending during the intervening period of two surveys, shall apply through Municipal Corporation or Municipal Council or Nagar Panchayat as the case may be, for the vending certificate ; and

(*viii*) identification of new sites, acceptance of application from new vendors as well as allotment to new applicants by Municipal Corporation or Municipal Council or Nagar Panchayat, as the case may be, shall be a continuous process rather than one time exercise.

6. The form and manner of issuing identity card.—The concerned Local Authority shall issue identity card in Form-3.

7. Criteria for issuing certificate of vending.—Every Local Authority/ Town Vending Committee shall give preference while allotting vending place, to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Women , persons with disabilities, unemployed, educated youth, handicapped person/senior citizens, single women, women headed household, self help groups of women entrepreneurs, minorities, etc. in the following order.-

(*i*) Scheduled Castes	5%
(*ii*) Scheduled Tribes	2%
(*iii*) Other Backward Classes	3%
(*iv*) Unemployed/Educated youth.	5%
(*v*) Handicapped person/senior citizens	2%
(*vi*) Single Women/women headed house hold	2%
(*vii*) Self Help Groups of Women entrepreneurs.	3%
(*viii*) Minorities	2%

Note:—In the case of allotment of vending place to reserved categories one family shall be allotted one vending place only in the State of Himachal Pradesh.

8. Fee for vending.—The vending fee shall be chargeable according to the category of the street vendor and the location of the market. The fees for Stationary Vendor shall be minimum Rs. 500/- (Rupees five hundred only) and maximum Rs. 1200/- (Rupees one thousand two hundred only) per month to the general category and for reserve category same shall be charged between Rs. 400/- (Rupees four hundred only) to Rs. 1000/- (Rupees one thousand only) per month. The fees for Mobile Vendors shall be minimum Rs. 300/- (Rupees three hundred only) and maximum Rs. 900/- (Rupees nine hundred only) per month to the General Category and for Reserve Category same shall be charged between Rs. 200/- (Rupees two hundred only) to Rs. 800/- (Rupees eight hundred only) per month. The fees for other category of vendors such as weekly, time sharing, etc. shall be minimum Rs. 100/- (Rupees one hundred only) and maximum Rs. 600/- (Rupees six hundred only).

9. Payment of necessary charges.—The vending fee, maintenance charges, fee for renewal of certificate of vending and penalties for registration after due date and other charges shall be collected through Nationalized Banks and counters of local authority and Town Vending Committee, as the case may be. Every Town Vending Committee will have a bank account. An annual audit of the account shall be carried out by the Town Vending Committee. Municipal Corporation, Municipal Council and Nagar Panchayat shall make an endeavor to device innovative methods (in partnership with banks) for fee collection to facilitate street vendors:

Provided that except vending fee, other charges shall be decided by the Town Vending Committee from time to time.

10. The period of validity of certificate of vending.—The vending certificate shall be valid for a period of five years from the date of issue.

11. Renewal of certificate of vending.—(1) Before completion of five years, the vending certificate shall be renewed by way of simple process after depositing the requisite fee in Form-4. The renewal fee shall be decided by the concerned Local Authority or Town Vending Committee from time to time.The receipt of fee deposited shall ensure renewal of certificate of vending.

(2) The Town Vending Committee shall publish a list of defaulter street vendors who have failed to deposit the fees for renewal of vending certificate within specified time. After due date, one month notice shall be issued to those street vender who fails to renew their vending certificate in Form-5. During the notice period, the street vender shall be liable to pay Rs. 20/-(Rupees twenty only) per day as penalty in addition to fee.

(3) The registered street vendor who has not got his vending certificate renewed even after service of first notice under clause (2), he shall be served another notice by the Town Vending Committee in Form -5, as to why his vending certificate should not be suspended or cancelled.

12. Cancellation of certificate.—In addition to the provisions contained under section 10, if a street vendor commits breach of any of the conditions given below, the Town Vending Committee shall have the power to cancel the certificate after giving him opportunity of being heard :-

(*i*) Carries out vending/squatting/hawking outside the market allotted according to the vending license;

(*ii*) Misrepresents the age (minimum age is 14 years) for eligibility to get vending certificate;

(*iii*) Violates norms of allotment of vending space. However, the maximum area of 5x7 sq.ft shall be allotted for vending ;

(*iv*) Extends the vending space unauthorizedly ;

(*v*) Constructs any kind of permanent structure;

(*vi*) Leases out/rents out/sells out the vending site to anyone else;

(*vii*) Fails to renew the vending certificate even after the expiry of the extra time given;

(*viii*)Employs any child labour(s) below the age of 14 years; and

(*ix*) Found guilty of mis-behavior with women vendor or any other person.

13. The categories of street vendors market other than stationary vendors market and mobile vendors are as under;

(*i*) Natural markets,

(*ii*) Weekly markets,

(*iii*) Heritage markets,

(*iv*) Festival markets,

(*v*) Night Bazars,

(*vi*) Food courts, and

(*vii*)Time sharing market.

14. Manner of relocating street vendor in case of public purpose.—When any question arises relating to public purpose, the same shall be decided in consultation with the Town Vending Committee, keeping in view the following points :—

(*i*) The Town Vending Committee recommendation/consent is mandatory;

(*ii*) The street vendor shall be adjusted in the same locality/area for vending;

(*iii*) During construction/development, the street vendor(s) may be adjusted in a nearby place temporarily; and

(*iv*) After the completion of development work, the displaced street vendor(s) may be given space for vending in the original place.

15. The Manner of evicting a street vendor.—In case where public obstruction is caused or survey is proposed to be conducted to identify an equally ideal vending site for the street vendors, in such situation, place occupied un-authorizedly by the street vendors shall be vacated subject to the condition that the Town Vending Committee shall place the matter for discussion before committee at least 6 months prior.

16. The manner of giving notice for eviction of a street vendor.—Before issuing eviction order under the provisions of Act and Scheme, one month notice shall be given to the street vendor or occupier of place and if he is unknown or not traceable, the notice shall either be placed on the notice board of the Town Vending Committee office or affixed to some conspicuous part of the vending place in Form-6.

17. The manner of physical eviction of street vendor.—(1) On completion of one month notice period, the street vendor shall be punishable with penalty, which may extend to rupees two hundred and fifty for every day during which such default continues and the same shall not be more than the value of the goods seized.

(2) If the Street Vendor fails to vacate the vending place occupied within stipulated period the local authority or the person/officer authorized in this behalf by the local authority, as the case may be, may take police assistance for evicting physically the street vendor/person and shall seize all goods including perishable/non-perishable from the vending place/space, if necessary.

18. Seizure of goods by the local authority.—After seizure of goods, the local authority or the person/officer authorized in this behalf by the local authority shall prepare list of goods duly signed by him in the presence of any two witnesses available on the site of vacated space/place in Form-7.

19. Reclamation of seized goods by the street vendors and the charges thereof.—(1) Goods seized by local authority or the authorized person/officer shall be released to the street vender under the provisions of Act and the Scheme, on his written request on same day in case of perishable goods and in case of non-perishable goods within two working days, on payment of fee of Rs. 500/- (Rupees five hundred only) and Rs. 100/- (Rupees one hundred only) per day for claiming the seized goods after prescribed time limit.

(2) In case the vendor does not claim the seized goods on same day, the Town Vending Committee or the authorized person/officer of the local authority shall forthwith give a notice to the street vendor in writing in Form-8 thereby and after the expiry of the time limit given in the notice which may not be less than two days from the date of service of the notice, he shall sell such goods or in case of perishable goods destroy the same if not, useable.

(3) Any goods seized by the Local Authority or the person/officer authorized in this behalf by the Local Authority shall not be returned to the street vendor unless he turns up for claiming the same after depositing the necessary charges for the removal or storage of such goods and if he fails to do so, the same shall be sold by public auction or in such other manner after preparing the details of such articles in Form-9. The necessary charges shall be decided by the Local Authority/Town Vending Committee from time to time.

(4) the charges for the removal and storage of the goods sold under the provisions of the Act and this Scheme, shall be paid out of the sale proceeds and the balance, if any, shall be paid to the street vender/owner of goods sold, on a claim being made within a period of two months from the date of sale, and if no such claim is made within the said period, it shall be credited to the funds of Local Authority or Town Vending Committee, as the case may be.

20. The form and the manner for carrying out social audit of the activities of Town Vending Committee.—(1) The Town Vending Committee shall constitute a three members unit for the purpose of carrying out social audit of its activities required to be performed under the provisions of the Act, or the Scheme.

(2) The social audit unit shall be an independent body and shall consist of,-

(*i*) an eminent Academician in the field of sociology;

(*ii*) an eminent Social Activist; and

(*iii*) a retired Administrator.

(3) The adequate supporting secretariat staff with office space and equipments shall be provided by the local authority to the social audit unit.

(4) The social audit shall be carried out at least once in every three years. The schedule for conducting social audit shall be decided at least three months advance.

(5) The Town Vending Committee shall provide details of all relevant information to the audit unit, at least a fortnight before the social audit process commences. Such details include,—

(*i*) status of implementation of the Act, Rules and the Scheme for the street vendors;

(*ii*) the record of the minutes of the meetings of the Town Vending Committee conducted in those years;

(*iii*) the record of all registered street vendors;

(*iv*) the record of appeals made before the local authority under section 11 of the Act;

(*v*) the record of all grievances or disputes brought before the grievance redressal committee constituted under section 20 of the Act;

(*vi*) the record of the total number of evictions taken place, confiscation of goods and the relocation of street vendors taken place in those years; and

(*vii*) the records of social audit reports, if any, taken place previously.

21. Meeting and working of social audit unit.—(1) The social audit unit shall conduct meetings and focus group discussions with street vendors on various aspects of the implementation of the Act, Rules and the Scheme.

(2) The audit unit shall record in writing the grievances of the street vendors on any issue or problem faced by them.

(3) At the culmination of the social audit process, the unit shall record its findings in writing.

(4) The audit unit shall hold a social audit public meeting at the town vending committee office. The members of the committee and representatives of the local authority shall attend the meeting. The audit unit shall read out its findings at the meeting. The street vendors shall be encouraged to testify and the Town Vending Committee shall respond to each of the issues identified in the social audit by giving clarification and explanation to the affected party and the public as to why a certain action was taken or not taken.

(5) The audit unit shall give adequate advance public notice of the social audit public meeting.

(6) The local authority shall, on each findings of the social audit unit in the cases of gaps, lapses or deviations, fix responsibility and shall take immediate corrective measures or disciplinary action. In case of a dispute, an administrative enquiry may be conducted by the local authority and action be taken accordingly in the shortest time possible but in any case not later than a month.

(7) The statutory requirement of conducting social audit shall not preclude any independent initiative to carry out normal audit of accounts.

(8) The social audit report submitted in this process shall form a part of the record and shall be responded to by the Town Vending Committee. Where shortcomings are found, immediate action shall be taken as per this Scheme. The action taken report shall form part of the record.

(9) The cost of conducting social audit shall be met from the budgetary provisions of the Town Vending Committee.

22. Condition for Re-designation of private place as restriction free-vending zones, restricted–vending zones and no-vending zones.—(1) It shall be determined by the Town Vending Committee in accordance with the two and half percent of the total population of street vendors of the ward/zone.

(2) In case, the number of applicants exceeds the number of spaces available in the vending zones, the Town Vending Committee may take steps to redesignate private places with the consent of the owner concerned as restriction free-vending zones on the terms and conditions specified in the Act and this Scheme to accommodate the left out applicants.

23. Norms for up keeping public health and hygiene.—(1) The Local Authority shall provide street vendors a proper place for disposing of their waste materials in order to maintain a hygienic environment.

(2) The street vendor(s) shall use proper covered dustbin(s) for disposing of the waste materials, in accordance with the waste disposal norms set by Municipality or Solid Waste Management system of Municipality. The “street” vendors shall also pay the sanitation charges as per the norms set by the Municipality for Solid Waste Management (SWM).

(3) The Local Authority shall ensure and provide the street vendors clean and fresh water alongwith the electricity/street light facility wherever possible.

(4) The Local Authority in order to maintain public health and hygiene shall provide toilets facility with adequate water and electricity.

(5) Appropriate number of dustbins shall be provided by the Local Authority to dispose of the waste materials.

(6) Town Vending Committee may initiate group insurance scheme for the street vendors.

24. The designation of State Nodal Officer.—(1) The State Nodal Officer shall not be below the rank of Additional /Jt. Director, Directorate of the Urban Development.

(2) The State Nodal Officer shall have at least a half yearly meeting with the Local Authority in order to update the status of the street vendors.

25. The manner of maintenance of proper records and other documents by the Town Vending Committee, Local Authority, Planning authority and State Nodal Officer in respect of street vendors.—(1) On-line software may be developed by the Urban Development Department for keeping the records of the street vendors.

(2) The Municipal Authority shall enter the data of the surveyed street vendors through on-line process.

(3) The certificate of vending and identity card may be generated on-line.

(4) The website of local authority shall display the vending zones and street vendors.

26. The manner of carrying out vending activities on time–sharing basis.—The Town Vending Committee shall determine the vending activities on time-sharing basis depending on the market needs and space to the street vendors. No women vendors shall be discriminated while allotting time-sharing vending activities.

27. Determining of vending zones as restriction free vending zones, restricted vending zones and non-vending zones.—(1) The Town Vending Committee shall decide the allotment of vending space according to the particular street or market. The Town Vending Committees shall take steps to facilitate the demarcation of restriction i.e. free vending zones, restricted vending zones and non-vending zones in cities/towns for marking the plans conducive and adequate for the hawkers/street vender of the respective city/town.

(2) The Local Authority/Town Vending Committee shall provide sufficient space, designated as 'Vendors' market' in lay out plans at locations of such natural markets for the number of vendors (Stationary and mobile) which can cater to demand for their wares/services. If aspirants to such location exceed the number of spaces available, excess may be regulated by way of fees or lottery and manner prescribed under clause 8 and not by discretionary licenses.

(3) The Mobile vendor may be permitted in area even outside the designated vendors' markets' unless the same are designated as 'non-vending zone'. The 'non-vending zone(s)' may be notified in terms of location and time. With the growth of city/town every new area should have adequate provisions for street vendors.

28. Capacity of vending zones and the manner of undertaking comprehensive census and survey.—Under section 3 of the Act, two and half percent of the population of street vendors of a ward/zone shall be accommodated as per the holding capacity. The holding capacity of a vending zone shall be according to the vending site divided by the total area of the vending zone.

29. Norms of relocation.—There shall be following norms of relocation:-

(*i*) relocation should be avoided as far as possible, unless there is clear and urgent need for the land in question;

(*ii*) any kind of loss of assets shall be avoided and in case of any loss it shall be compensated;

(*iii*) affected vendors or their representative shall be involved in planning and implementation of the rehabilitation project;

(*iv*) the Town Vending Committee shall engage in the dialogues with the representatives of the markets; and

(*v*) mutually agreed place for relocation should be considered under the implementation of the rehabilitation project.

(*vi*) affected vendors shall be relocated so as to improve their livelihoods and standards of living at least to restore them, in real terms to pre-evicted levels;

(*vii*) livelihood opportunities created by new infrastructure development projects shall accommodate the eligible displaced vendors ;

(*viii*) any transfer of title or other interest in land will not affect the livelihood of street vendors on such land, and any relocation consequent upon such a transfer shall be done in accordance with the provisions of the Act;

(*ix*) State machinery shall take comprehensive measures to check and control the practices of forced evictions; and

(*x*) natural markets where street vendors have conducted business for over fifty years shall be declared as heritage markets, and the street vendors in such markets shall not be relocated :

Provided that the Local Authority may prepare a list of such markets and declare them as "Heritage Markets". The Municipal bodies in collaboration with the Tourism Department shall promote such markets as Tourist Markets.

Form-1

(*See* clause 4)

Street Vendor Certificate

Unique Registration No._____

Name of State _____

Name of Municipality _____

_____

Photograph of vendor along with his/her spouse or dependent child

Name of Vending Zone_____

Name of Vending Place_____

Category of Vending (whether Mobile/Stationery/Natural/Weekly etc.)_____

Name of the spouse or dependent child if involved in vending with the vendor_____

Age and sex of the person (s) whose photo appears/affix_____
This is to certify that _____, Husband or Father of _____, age_____ residential address, _____ Category _____ is a registered street vendor of _____, (Municipality Name) as provided under clause 6.

Date of Issue: _____

(Signature)

Valid up to: _____

Note.—The vendor shall renew the Vending Certificate after every five years.

_____

Form-2

[*See* clause 5(v)]

FORMAT FOR LETTER OF UNDERTAKING BY A STREET VENDOR

I,……, wife/ son/ daughter of Shri……, Registration/ Certificate of Vending No……..of……town vending committee, hereby declare that the certificate of vending granted to me shall not be leased, rented or sold to any other person.

I, further declare that I am not engaged in any other business/ not vending from any other vending site/ not employed with any organization.

Name and Signature of the Vendor: ……

Registration/ Certificate of Vending Number:……

Date: *Signature of Vendor*:

Place:

_____

Form-3

(*See* clause 6)

Identity Card

Name of Municipality	
Unique Registration No…….....	Father's/Husband's Name…….....
Affix photo of the vendor	Category of Vending…….....
	Municipal Ward/ Vending Zone……....
	Address/Location of the Vending Site…….
	Residence Address……
	Police Station……

Name ……..... Age …….. Sex …… Phone No. …….	Signature ……
Issuing Date……..... Commissioner/EO/Secretary of concerned Urban Local Body……..	

Form-4

[*See* clause 11(1)]

APPLICATION FOR RENEWAL OF STREET VENDOR'S CERTIFICATE

(This form is to be completed in block letters.)

Names of applicant.....
(Surname first)

Fathers Name…….

Unique Registration Number.....

Residence address.....

Postal address.....

I wish to apply for the renewal of my street vendor's certificate as follows:

(1) Areas to be covered–
.....

.....

(2) Trading in the following classes of goods–
.....

.....

Date: .....

Signature of applicant

FOR OFFICIAL USE ONLY
Date on which application was received .....

Date of approval/rejection of application .....

Signature of officer
With seal.

Form-5

[*See* clause 11(2) and (3)]

NOTICE FOR RENEWAL OF STREET VENDOR'S CERTIFICATE

Names of the Vendor.....

Father's Name:- .....

Unique Registration Number.....

Location of the vending Site.....

Residence address.....

Date of earlier notice issued .....

Postal address.....

Reasons of non renewal .....

Date:

Signature of officer
With seal

Important instruction:

(1) One month notice shall be served to the street vendor for renewal of vending certificate.

(2) After serving one month notice, if he fails to renew the vending certificate another notice may be served as to why his/her vending certificate may not be suspended or cancelled.

_____

Form-6

(*See* clause 16)

Notice for eviction of street vendor

Names of the Vendor.....
(Surname first)

Father's Name:- .....

Unique Registration Number.....

Location of the vending site.....

Residence address.....

Postal address.....

Reasons of eviction.....

Date: *Signature of officer*
With seal

Important instructions:

(1) One month notice shall be served to the street vendor or occupier of the place.

(2) If he is unknown, the notice may be placed on the notice board of the Town Vending Committee.

(3) After serving one month notice, if he fails to vacate the vending place, shall be punishable with penalty upto Rupees two hundred fifty for everyday.

(4) Where such non compliance continues in spite of notice and fine imposed, the Town Vending Committee or authorised officer as the case may be, may require police assistance to remove physically the street vendor.

Form-7

(*See* clause 18)

List of Seized Goods

1. Name and address of person from whom the goods is seized.....

2. Unique Registration Number……

3. Place of seizure with date and time.....

4. Details of the Goods seized……..

   (a) Description of each goods.....

5. Name and address of person under whose custody the seized property has been kept.....

6. Signature of custodian.....

7. Approximate value of the seized good.....

8. Remarks.....
   .....
   .....

9. Name and address of the witness with their signature:

(1) .....
.....

(2) .....
.....

Date: *Signature of Officer/ Official seizing the good with full name Designation and address.*

_____

Form-8

[*See* clause 19 (2)]

Notice for reclamation of seized goods

1. Name and address of person from whom the goods is seized …….....
.....

2. Name and address of any other claimant for the seized goods.....

3. Name and address of person under whose custody the seized property has been kept.....

4. Place of seizure with date and time.....

5. Details of the goods seized…….....

6. Approximate value of the seized good……..

7. Remarks…….....
.....

Date: *Signature of Officer/official seizing the good with Designation and address*

_____

Form-9

[See clause 19(3)]

Detail of articles placed for auction

1. Name and address of person from whom the articles seized……

2. Name of custodian……

3. Date and place of auction……..

4. Details of articles/goods…….

5. Approximate value…….

6. Auction amount…….

7. Amount adjusted against expenses for seizing of articles/goods……..

8. Refundable amount…….

9. Witnesses……..

1 ……

2 ……...

Date:

Signature of Officer
with
Designation and address

By order,
MANISH NANDA,
Additional Chief Secretary (UD).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, 16 *th January,* 2017

No. Shram (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh.—

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	614/2016	Virender Kumar	Er.-in-Chief & other	05-11-2016
2.	403/2015	Kamla Kumari	E.E. HPPWD, Killar	09-11-2016
3.	406/2015	Kami Devi	E.E. HPPWD, Killar	09-11-2016
4.	408/2015	Aaj Dei	E.E. HPPWD, Killar	09-11-2016
5.	410/2015	Bodh Raj	E.E. HPPWD, Killar	09-11-2016
6.	419/2015	Sili Devi	E.E. HPPWD, Killar	09-11-2016
7.	398/2015	Negi Ram	E.E. HPPWD, Killar	09-11-2016
8.	284/2015	Bihari Lal	CSK HPKVV	16-11-2016
9.	233/2014	Gorakh Singh	Dr. Y.S.Parmar Uni.	21-11-2016
10.	402/2015	Roshan Lal	E.E. I&PH/HPPWD Killar	28-11-2016

11.	459/2015	Souni Devi	E.E. I&PH/HPPWD Killar	28-11-2016
12	455/2015	Man Dei	E.E. I&PH/HPPWD Killar	28-11-2016
13	271/2015	Sakina Devi	E.E.HPPWD, Joginder Nagar	28-11-2016
14	434/2015	Kuldeep Chand	E.E.HPPWD, Joginder Nagar	28-11-2016
15	207/2015	Gassi Lal	E.E. HPPWD, Killar	29-11-2016
16	231/2015	Trilok Singh	E.E. HPPWD, Killar	29-11-2016
17	325/2015	Harnam Singh	E.E. HPPWD, Killar	29-11-2016
18.	341/2015	Bhag Dei	E.E. HPPWD, Killar	29-11-2016
19	446/2015	Gian Chand	E.E. HPPWD, Killar	29-11-2016
20	174/2015	Thanu Lal	E.E. HPPWD, Killar	29-11-2016
21	77/2015	Dev Raj	E.E. HPPWD, Killar	29-11-2016
22	36/2014	Shubha Rani	M.D. Sazler Electronics	29-11-2016
23	323/2015	Desh Raj	E.E. HPPWD, Salooni	29-11-2016
24	212/2015	Hem Raj	E.E. HPPWD, Salooni	29-11-2016
25	346/2014	Sunku Ram	Dy. Director Agriculture Chamba	29-11-2016

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 614/ 2016

Sh. Virender Kumar s/o Sh. Sohan Lal, Village Nansai, P.O. Sidhpur, Tehsil Sarkaghat, Distt. Mandi. ...*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.

2. The Executive Engineeer, HPPWD, Division Dharampur, Distt. Mandi, H.P.

...*Respondents*.

05-11-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondents.

Case called on several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.20 A.M. Be awaited and put up after lunch hours.

(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

05-11-2016 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action/publication. The file, after completion be consigned to the records.

Announced:

05-11-2016

(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref No. : 403/2015
Date of Institution : 10.09.2015
Date of Decision : 09.11.2016

Smt. Kamla Kumari w/o Shri Basant Singh, r/o Village Kuthal, P.O. Sach, Tehsil Churah, District Chamba, H.P. ...*Petitioner*.

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Kamla Kumari W/O Shri Basant Singh, R/O Village Kuthal, P.O. Sach, Tehsil Churah, District Chamba, H.P. before the

Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 23.10.2011 regarding her alleged illegal termination of services during September, 2003 suffers from delay and latches? If not, Whether termination of the services of Smt. Kamla Kumari W/O Shri Basant Singh, R/O Village Kuthal, P.O. Sach, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of June, 1994 who continuously worked till September, 2003 in IPH Sub Division, Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service in the end of September, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2003. She further prayed for reinstatement in service w.e.f. month of September, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between June, 1994 to September, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 and 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23.10.2011 qua her termination of service during September, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent w.e.f. September, 2003 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of June, 1994 who continuously worked till 2003 at IPH/HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from June, 1994 to September, 2003. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'able High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 146 days in the year 1994, 10 days in 1995, 122 days in 2000, 99 days in 2001, 77 days in 2002 and 108 days in 2003 and thus a total of her service in 1994 to 2003 in 6 years she had worked for 562 days in her entire service period. Be it noticed that she had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 108 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has

erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld.

Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 562 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years i.e. demand notice was given on 23.10.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 42 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex

Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref No. : 406/2015
Date of Institution : 10.09.2015
Date of Decision : 09.11.2016

Smt. Kami Devi w/o Shri Bhim Singh, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Kami Devi W/O Shri Bhim Singh, R/O Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 27.08.2012 regarding her alleged illegal termination of services during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Smt. Kami Devi W/O Shri Bhim Singh, R/O Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1997 who continuously worked till September, 2004 with the respondent/ department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/ department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of

petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1997 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2005 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 and 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if etitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 27.08.2012 qua her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent w.e.f. September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 1997 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have

worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from May, 1997 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 36 days in the year 1997, 43 days in 1999, 75 days in 2000, 117.5 days in 2001, 141 days in 2002, 120 days in 2003 and 78 days in 2004 and thus a total of her service in 1997 to 2004 in 7 years she had worked for 610.5 days in her entire service period. Be it noticed that she had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 78 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999

and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner□s termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated

here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material

evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial

dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 610.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years i.e. demand notice was given on 27.08.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 45 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of November, 2016.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref No. : 408/2015
Date of Institution : 10.09.2015
Date of Decision : 09.11.2016

Smt. Aaj Dei w/o Shri Govind Chand, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Aaj Dei W/O Shri Govind Chand, R/O Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 4.4.2012 regarding her alleged illegal termination of service during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Smt. Aaj Dei W/O Shri Govind Chand, R/O Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of September, 1995 who continuously worked till September, 2004 with the respondent/ department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/ department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between September, 1995 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2004 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been

denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 and 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 04.04.2012 qua her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of the services of petitioner by the respondent *w.e.f.* September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

6. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes

Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of September, 1995 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from September, 1995 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically

admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 56 days in the year 1995, 30 days in 1997, 99 days in 1998, 79 days in 1999, 128 days in 2000, 105.5 days in 2001, 146 days in 2002, 118 days in 2003 and 104 days in 2004 and thus a total of her service in 1995 to 2004 in 9 years she had worked for 761.5 days in her entire service period. Be it noticed that she had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 78 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex.

RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference :

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision

has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be

existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 9 years and actually worked for 761.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7½ years i.e. demand notice was given on 04.04.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 48 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref No. : 410/2015
Date of Institution : 10.09.2015
Date of Decision : 09.11.2016

Shri Bodh Raj s/o Shri Bansi Lal, r/o Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Bodh Raj S/O Shri Bansi Lal, R/O Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 06.10.2011 regarding his alleged illegal termination of service during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Bodh Raj S/O Shri Bansi Lal, R/O Village Kironi Mouch, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of June, 1994 who continuously worked till September, 2004 with the respondent/ department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/ department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of

petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/ awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.1.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 06.10.2011 qua his termination of service during September, 2004 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 who continuously worked till 2004 with the respondent/ department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have

worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 50 ½ days in the year 1995, 85 days in 1996, 64 days in 1997, 71 days in 1998, 141 days in 1999, 128 days in 2000, 82 days in 2001, 165 days in 2002, 134 days in 2003 and 105 days in 2004 and thus a total of his service in 1995 to 2004 in 10 years he had worked for 1025.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 105 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case

since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer

deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without

examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial

dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1025.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about seven years i.e. demand notice was given on 06.10.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 33 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of November, 2016.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref No. : 419/2015
Date of Institution : 10.09.2015
Date of Decision : 09.11.2016

Ms. Sili Devi d/o Shri Sukh Devi, r/o Village and Post Office Shoon, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Ms. Sili Dvi D/O Shri Sukh Devi, R/O Village and Post Office Shoon, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 02.02.2012 regarding her alleged illegal termination of services during October, 2004 suffers from delay and latches? If not, Whether termination of the services of Ms. Sili Dvi D/O Shri Sukh Devi, R/O Village and Post Office Shoon, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1994 who continuously worked till October, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service in the end of October, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of October, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. She further prayed for reinstatement in service w.e.f. month of October, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1994 to October, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2004 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 and

26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/ awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02.02.2012 qua her termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent *w.e.f.* October, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

7. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes

Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,20,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 1994 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from May, 1994 to October, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically

admitted that no departmental inquiry was initiated against petitioner even after October, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 161 days in the year 1994, 173 days in 1995, 164 days in 1996, 65 days in 1997, 86 days in 1998, 84 days in 1999, 90 days in 2001, 89 days in 2002, 88 days in 2003 and 100 days in 2004 and thus a total of her service in 1994 to 2004 in 10 years she had worked for 1100 days in her entire service period. Be it noticed that except the years 1997 to 2004 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 100 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders

of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding

the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally

questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1100 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 7 years i.e. demand notice was given on 02.02.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 41 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT CHAMBA)

Ref No. : 398/2015
Date of Institution : 10.09.2015
Date of Decision : 09.11.2016

Shri Negi Ram s/o Shri Hira Nand, r/o Village and Post Office Mindal, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

> "Whether the industrial dispute raised by the worker Shri Negi Ram S/O Shri Hira Nand, r/o Village and Post Office Mindal, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 02.02.2012 regarding his alleged illegal termination of service during July, 1999 suffers from delay and latches? If not, Whether termination of the services of Shri Negi Ram S/O Shri Hira Nand, r/o Village and Post Office Mindal, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during July, 1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1996 who continuously worked till July, 1999 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service in the end of July, 1999 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of July, 1999 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been

paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of July, 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/ retrenchment by the respondent in the month of July, 1999. He further prayed for reinstatement in service w.e.f. month of July, 1999 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1996 to July, 1999 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2004 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/ awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02.02.2012 qua his termination of service during July, 1999 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent during July, 1999 is/was illegal and unjustified as alleged? ...*OPP.*

5. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

6. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 who continuously worked till 1999 with the respondent/ department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have

worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to July, 1999. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 165 days in the year 1996, 176 days in 1997, 87 days in 1998 and 62 days in 1999 and thus a total of his service in 1996 to 1999 in 04 years he had worked for 490 days in his entire service period. Be it noticed that except the years 1998 and 1999 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 62 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999

and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in July, 1999, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex

Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
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> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
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> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—
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> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in

material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
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> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial

dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 490 days as per mandays chart on record and that the services of petitioner were disengaged in July, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 12 ½ years i.e. demand notice was given on 02.02.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 284/2015
Date of Institution : 13.07.2015
Date of Decision : 16.11.2016

Shri Bihari Lal s/o late Shri Dharu, through Secretary, District Committee, All India Trade Union Congress (AITUC) c/o H.P.S.E.B. Colony Complex Salooni, District Chamba, H.P.
...Petitioner.

Versus

The Registrar, C.S.K. H.P. Krishi Vishva Vidyalaya, Palampur, District Kangra, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rohit Dutta, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the action of the employer i.e. the Registrar, C.S.K. H.P. Krishi Vishva Vidyalaya, Palampur, District Kangra, H.P. not to regularize the services of Shri Bihari lal S/O Late Shri Dharu, through Secretary, District Committee, All India Trade Union Congress (AITUC) C/o H.P.S.E.B Colony Complex Salooni, District Chamba, H.P. who is working at Research Sub Station Salooni, on completion of continuous service of 8 years, as per policy of the Himachal Pradesh Government is legal and justified? If Not, what benefits regarding regularization, back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that in 1984, land comprised in Khata/Khatauni no. 7/9 min, Khasra no. 235, total land measuring 2 bighas situated at Mohal Aheni, Pargana Majir, P.O. & Tehsil Salooni, District Chamba, H.P. belonging to one Dharu Ram had been acquired by CKS HP Krishi Vishva Vidalaya, Palampur, District Kangra for the purposes of setting up Research Sub Station at District Chamba. Averments made in the claim petition revealed that said Dharu Ram the father of claimant/petitioner had sworn an affidavit on 25.3.1996 in favour of the applicant whereby he had no objection if the employment was given to petitioner in Research Centre Chamba his son in lieu of land purchased by the respondent/university. It is alleged that sale deed was executed by the father of petitioner in favour of respondent when at the time acquiring land by the respondent/department that in addition to the compensation for the land which was to be acquired one person to from each family whose land had been acquired would be given employment with respondent/department. It further transpires from the claim petition that affidavits in this regard were obtained on 22.10.1984 whereby duly attested by the Naib Tehsildar Saluni Chamba in which about 13 owners of two gram panchayats were submitted and in pursuance to said documents a letter was issued by the Collector for providing job to one of the family members of the land owners whose land has been acquired. It is further revealed from claim petition that mutation of the land so acquired by the respondent/department was got attested on 12.6.1990 for which mutation no.291 was attested and was correspondingly reflected in jamabandi. The grievance of petitioner remains that respondent/department after acquiring the land did not adhere to its understanding and on account of employment of the claimant/petitioner on one pretext to others and despite recurrent reminders but nothing fruitful came out. The petitioner alleges to have get the employment in agriculture with the respondent/department and even on several occasions he had personally visited the respondent/department but was assured that needful to be done but action was not taken by the respondent/department qua employment of the petitioner. It is also alleged that other villagers whose land had acquired by respondent were given employment on adhoc basis who were now posted in various different place on regular basis. For the discriminatory attitude of respondent, petitioner had served a legal notice through counsel requesting the respondent to provide job as agreed by the respondent/department within 60 days from the receipt of notice. It is alleged that on receiving legal notice, the respondent/department came into action and issued an office order no.8-1133/94-C.S.K.H.P.K.V (Estt.)/Vol. II, dated 28.6.2002 in favour of the petitioner engaging him as daily paid labourer for a period of only 89 days from the date petitioner reported for duty at the Research Sub Station Saluni District Chamba. In pursuance to issuance of above said notice, petitioner reported for duty at the Research Sub Station, Salooni and joined the duties, thereafter petitioner had been continuously working with the respondent/ department. It is alleged that in the last 13 years petitioner has regularly worked in the respondent/ department for about 361 days in a year. The grievance of petitioner also remains that even regular service for more than 13 years he was still not regularized by the respondent/department whereas Balwant Singh s/o Chetro, Ms. Himani d/o Hans Raj, Jagdish s/o Shri Singh, Man Singh s/o Bhilo and Ram Kishan s/o Jai Dyal etc. had been regularized by respondent and these workers were engaged by the respondent on regular basis but the petitioner still continued to be a daily waged worker and thus action of the respondent is alleged to be discriminatory in the eyes of law. It is also alleged that respondent had allowed petitioner to work for only 89 days giving fictional break in service so the petitioner could not complete criteria and thus action of the respondent/department is stated to be gross violation of the agreement/understanding entered between the father of petitioner and respondent/department. Thereafter a letter was issued by Secretary, Govt. of H.P. vide no.IPH (A) 2 (B) dated 1.2.2003 in which it was held that according to various courts a plea of fictional break was not recognized. It is also alleged that respondent did not take any action qua regularization of service of petitioner. After demand notice petitioner as well as respondent/ department appeared before Labour Officer-cum-Conciliation Officer and set meetings but did not yield fruitful benefits consequent upon the matter was forwarded to the Labour Commissioner, Shimla. The petitioner also alleges that he was unnecessarily harassed by the respondent/ department submitting that he is the sole bread earner of the family look after and claimant/

petitioner to be a skilled carpenter but this fact was also not taken by the respondent/department. Accordingly, petitioner has prayed that respondent be directed to regularize the services of petitioner with immediate effect from back date w.e.f. January, 1994 besides payment of arrears along-with interest and litigation costs of Rs.80,000/-.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of locus standi, cause action, petition being barred on account of jurisdiction. On merits admitted that land of father of petitioner was purchased by respondent along-with 13 owners so as to set up university research sub station at Salooni and at that time Vice Chancellor of university had given understanding to Deputy Commissioner, Chamba that one person of each family would be given employment in the university benefiting to their skill/educational qualification of daily wages or regular basis depending upon the availability of posts from time to time. It is admitted that for the first time request of Dharu Ram father of petitioner whose land had been purchased for establishment of Research Sub Station Salooni was received for providing job to his son Bihari Lal in the year 1994 but the same was not accompanied with requisite documents and thereafter Bihari Lal aforestated requested the university to provide job vide his letter dated 21.3.1995. In pursuance to said request, another letter was sent by the respondent/university calling upon the petitioner to submit detail of right holders of the land and also affidavits of all the legal heirs of Dharu Ram on the point of any objection for the offer of appointment given to the petitioner. It is alleged that vide letters dated 22.5.2000 and 1.6.2000 petitioner moved request letter dated 3.6.2000 vide which he had stated that in case any of legal heirs of the property would claim right for the employment in the university, he would resign from the post and his such request was considered and thus engaged as daily paid labourer at Research Sub Station Salooni vide office order dated 28.6.2002. It is also alleged that since there were other legal heirs of Dharu Ram had not furnished no objection in favour of the petitioner as such his case for employment could not be considered. It is also alleged that on the basis of judgment passed in Civil Suit no.443/1996 dated 31.7.2000 of ld. Civil Judge, Chamba in similar situated case the petitioner was also offered appointment as stated above. It is also contended that the State Council of Agricultural, Horticultural and Forestry Education and Research in its meeting held on 20.2.2010 decided to reduce strength of the university which matter attained finality in which the council had approved for strength of 1403 workers working under the university. It is also alleged that while reducing strength of category 'D' staff had approved 250 posts whereas already 927 persons working as category 'D' in the university and even still 693 persons working which is figured much higher than fixed core strength and thus category 'D' had already been declared surplus and it was not possible to adopt H.P. Govt. policies regarding regularization of daily paid labourers after 2009-2010 and for said reason surplus could not be filled up for regularization. It is alleged that case of the petitioner along-with other was taken up with H.P. Govt. during year 2007 for grant of permission to give them regular appointment in lieu of land purchased for establishment but same was turned over. It is also maintained that working days of petitioner right from his engagement had been reflected in the mandays chart correctly. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition denied allegations of non availability of vacancies for the purposes of regularization.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of jamabandi, Ex. PW1/C copy of application dated 26.5.1986, Ex. PW1/D copy of application dated 6.12.2008, copy of letters, office orders and other documents Mark-A to L, Ex. PW1/E copy of mandays chart, Ex. PW1/F copy of letter dated 28.5.2011, Ex. PW1/G copy of experience certificate and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined Shri Manoj Kumar, Registrar, CSK HPKV Palampur as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of letter dated 17.1.2006, Ex. RW1/C copy of letter dated 10.4.2007, Ex.

RW1/D copy of notification dated 21.5.2007, Ex. RW1/E copy of seniority list, Ex. RW1/F copy of mandays chart, Ex. RW1/G copy of office order dated 28.6.2002, Ex. RW1/H copy of judgment dated 31.7.2005 in Civil Suit no. 443/1996, Ex. RW1/I copy of meeting proceedings dated 20.2.2010, Ex. RW1/J copy of notification, Ex. RW1/K copy of letter dated 21.3.1995, Ex. R1 to Ex. R3 copies of letters dated 22.5.2000, 1.6.2000 & 22.5.2000 and closed the evidence.

7. I have heard the ld. counsel for the parties, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 15.12.2015 for determination:

1. Whether action of the employer i.e. Registrar, C.S.K. H.P. Krishi Vishva Vidyalaya, Palampur, District Kangra, H.P. not to regularize the services of petitioner who is working at Research Sub-Station Salooni, on completion of continuous service of 8 years as per policy of the Himachal Pradesh Govt. is/was improper and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether petitioner has no locus standi to file the present claim as alleged? ...*OPR.*

4. Whether the petitioner has no cause of action to file present case as alleged? ...*OPR.*

5. Whether the claim petition is time barred as alleged. If so, its effect? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No
Relief. : Claim Petition is allowed per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is not in dispute that petitioner was engaged vide Ex. RW1/G dated 28.6.2002 as DPL by respondent who joined at RSS Chamba on 2.7.2002 and remained in employment upto January, 2016 till his retirement. It is equally admitted case of the parties that petitioner was initially engaged for 89 days vide Ex. RW1/G but continued to work under respondent for next 14 years. It is evident from mandays chart Ex. RW1/F that from 2002 to 2014 petitioner had regularly worked for the entire years however in year 2000 had worked for 181 days from 2.7.2002 to

31.12.2002 and till the date of filing of petition in 2015 he worked for 230 ½ days from 1.1.2015 to 31.8.2015. The grievance of the petitioner remains that he worked for more that eight years but his services had not been regularized rather he was appointed as DPL whereas other land owners whose land was acquired were appointed on adhoc basis have now been regularized. Cross-examination of Shri Manoj Kumar, RW1 the then Registrar of the revealed that petitioner had completed eight years of service in the year 2010 and according to the policy of the respondent, the services of petitioner was to be regularized. Be it noticed that admission of respondent on oath as stated above clearly support the claim of petitioner qua regularization after eight years of service and thus parties are factually not in dispute on this score.

12. Before proceeding further, it would be relevant to go through evidence which showed the manner in which the petitioner was engaged. It is admitted case of the parties that land of one Dharu Ram, father of petitioner was acquired by the respondent who requested vide his letter in the year 1994 for providing job to his son, the petitioner in this case besides land of Dharu Ram acquired by the respondent had been shown in the Ex. PW1/B. Mark-D is the affidavit of Dharu Ram dated 25.3.1996 vide which he had requested for appointment of petitioner under respondent. The case of the respondent contrarily remains that when petitioner had approached respondent for employment, he was demanded details of right holders of land but the petitioner instead of supplying the details vide letter dated 3.6.2000 intimated if any of the legal heirs of Dharu Ram would claim right of employment in university, petitioner would resign which was considered by the university and petitioner was engaged as DPL as stated also on the basis of judgment dated 31.7.2000 Ex. RW1/H of similar nature. The case of petitioner also remains that in 'D' category employees were in surplus as there were 250 posts which were approved against 927 persons already working in the university. In so far as four persons as alleged in para no.4 of the claim petition is concerned, respondent has admitted to have engaged them on adhoc basis who have consequently been regularized by university but petitioner was employed on daily basis as DPL RSS Salooni as he was illiterate and had not furnished documents required by respondent department. Significantly, respondent also admits that in 2007 case of petitioner along-with other land owners had been sent for regularization for approval of government which was declined probably on the ground of financial crisis. As such, respondents have put forth multiple stand for declining petitioner in regular service.

13. Stepping into witness box as PW1, petitioner Shri Bihari Lal has sworn his affidavit Ex. PW1/A who has maintained that he had been regularly working from 2002 and had worked for more than 13 years under respondent. He has also deposed on oath that when his services were not regularized after eight years as required under the rules, he served legal notice on respondent and on receipt of legal notice, respondent instead of replying the same has engaged petitioner for 89 days as DPL which was accepted by petitioner. The grievance of petitioner remains that he has not been regularized even after rendering service for 13 years whereas as per policy of the government petitioner was to be regularized after eight years i.e. in the year 2010. It is also stipulated in the affidavit that petitioner was scheduled to retire in January, 2016 but respondent had not bothered to take any action regularizing of the petitioner. Cross-examination of the petitioner reveals that in the year 1997-1998, he has admitted that on death of father of petitioner, he did not obtain NOC from other legal heirs although petitioner has admitted that after his appointment no person of DPL category was regularized by the department. At this stage, it may not be erroneous to state that respondent had arbitrarily appointed petitioner as DPL whereas other land owners whose land was acquired were appointed on adhoc basis. Merely because petitioner had accepted offer for being appointment as DPL in pursuance to legal notice issued to respondent does not take way his right engaged as adhoc basis. It remains the case of the respondent that respondent was short listed on the basis of qualification but petitioner did not file any documents. It is relevant to mention here that petitioner had worked for about 14 years in between but the respondent had never called upon any explanation qua his work and conduct. Repudiating the evidence led by the petitioner,

respondent RW1 Shri Manoj Kumar working as Registrar of the respondent has admitted in cross-examination that from the year 1985 to 1995 petitioner had been corresponding with respondent/ department but respondent had not replied. It is further admitted case of the petitioner by deposing in cross-examination that father of petitioner had filed affidavit who was to be offered job in respondent/department. It may be noted that Dharu Ram own land was acquired who wanted his son Bihari Lal to be appointed. Even respondent has admitted that legal notice dated 16.6.2002 Mark-H was issued. Thus, from admissions made by RW1 in cross-examination particularly petitioner having completed eight years who was to be regularized not later then in the year 2010 has also admitted the respondent/department had made reference to the HP Government in 2007 for regularizing petitioner and thus legitimate right of petitioner was declined without any plausible reason. It is also evident from copies of letters written by petitioner that he had been in touch with the department for quite long time in connection with his regularization but the same has not been considered till his retirement in January, 2016.

14. Ld. counsel for petitioner has relied on judgment dated 31.7.2000 titled as Mulakh Raj vs. Sate of H.P. & Ors. which is Ex. RW1/H having similar facts but did not involve petitioner's claim. It is evident from the findings on the records judgment referred to above that similar controversy was resolved by ld. Civil Judge, Chamba who directed the respondent vide mandatory injunction to engage legal heirs of the deceased whereby respondents were directed to provide job to one member of the family of petitioner as daily paid labourer (DPL) according to undertaking given as per letter Ex. P1. This letter further shows that Civil Suit no.443/1996 was decreed in favour plaintiff Mulkh Raj and one of the member of family whose land had been acquired to be appointed as daily paid labourer and it seems that after the judgment, petitioner was granted employment as daily paid labourer and not on adhoc basis. Although, this judgment did not directly applying to petitioner's case but had similar controversy and on the basis of findings of the judgment the respondent decided to appoint petitioner in service as daily paid labourer. Letter Mark-A on record shows correspondence between the Vice Chancellor of H.P. Krishi Vishva Vidayalaya, Palampur with the Deputy Commissioner, Kangra in which it was specifically mentioned that one person physically fit of from each family would be employed as daily paid labourer. If any one of them possesses educational qualification which fits in requisite qualification for various posts, then they would be considered for regular employment. There was reference of 13 land owners whose land was acquired for RSS Salooni Chamba. The land in question nowhere shows that who out of land owners would be appointed as daily paid labourer on regular basis but certainly there was no stipulation of engagement on adhoc basis. In any case, there was no justification for engaging the petitioner as daily paid labourer who could also be appointed as adhoc basis as Balwant Singh, Himani, Jagdish, Mansingh and Ram Krishan were appointed. It has been emphasized by the ld. counsel for respondent that petitioner was time and again asked to furnish record of right holders in the land but this aspect ceases to have in significance as the father of the petitioner during his life time has sworn his affidavit requesting the respondent to engage the petitioner his son, in job. In view of foregoing discussions, the petitioner had right of being regularized in service after rendering continuous service of eight years as per policy of H.P. Govt. which was also applicable in case of petitioner. It is also evident from evidence on record that respondent had not regularized the services of petitioner who had retired in January, 2016 after rendering 14 years of service. It is admittedly not the case of the respondent that conduct of petitioner was not satisfactory but said petitioner continued to work with the respondent for about 14 years although he was initially appointed for 89 days in year 2002. From the admission made by RW1 and averments made in the reply to the petition clearly suggest that even the respondent/ department had been vigorously pursuing case of service of 13 land owners including petitioner for being regularized but the government has declined the same as has specifically been alleged in reply of respondent. As such, the petitioner is entitled for regularization after completion of eight years of service from his initial date of joining in service in 02.7.2002. Accordingly, issue no.1 is answered in affirmative whereas issues no. 3 and 4 are decided in negative and in favour of

petitioner and against the respondent. As far as plea of petitioner that he has entitled for back wages is concerned this has to be denied in view of the fact that petitioner has been paid wages for entire period he worked as DPL till his retirement. However, on his completion of eight years of service in the year 2010, he would be regularized and thereafter his scale would be re-fixed and consequent increment which would fall in his favour revised wages may be calculated which he would entitled. At this stage, there is no question of back wages as entire wages had been paid and wages of revised scale could be paid only when petitioner is regularized and new scales for petitioner are calculated as such petitioner at the movement not entitled for back wages as stated above. For the aforestated reason issue no.2 is decided as discussed above.

ISSUE NO.5

15. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon□ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

16. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent rather petitioner has promptly approached to settle his grievance as he raised industrial dispute during his service before retirement and reference of appropriate government was received in July, 2015. It has come in the evidence that petitioner was continuously corresponding with university for regularization. Thus, there was no delay and laches on part of petitioner. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is answered in negative in favour of petitioner against the respondent.

RELIEF

17. As sequel to my findings on foregoing issues, respondent is hereby directed to regularize the service of petitioner forthwith on completion of continuous service of eight years from date of initial appointment i.e. 02/7/2002 as per the policy of the government of Himachal Pradesh and that the conduct of respondent in not regularizing service of petitioner from such a long time as stated above is improper and unjustified. Accordingly, petitioner is hereby directed to regularize service of petitioner from the date of completion of more than eight years of service as stated above with all consequential benefits except back wages which is to be calculated after regularization in service and after fixation of scales. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 233/2014

Sh. Gorkh Singh s/o Sh. Dina Nath, Village Ujhan, P.O. Didwin, Tehsil Barsar, Distt. Hamirpur, H.P. ...*Petitioner.*

Versus

1. The Registrar Dr.Y.S. Parmar University Horticulture & Forestry Nauni, Distt. Solan, H.P.

2. The Director, Regional Horticulture and Forestry Research Station Bhota, Distt. Hamirpur, H.P. ...*Respondents.*

21-11-2016 Present : Sh. S.S.Sippy, A.R. for the petitioner.
Sh. Karan Pathania, adv. csl. for the respondents.

Heard. Authorised representative for the petitioner has made statement for withdrawal of claim petition pending before this Court due to incorrect date of termination mentioned in the claim petition. He has specifically stated that he wants to agitate again before the Competent Authority with liberty to file fresh claim. Admitting statement of petitioner as stated above ld. csl. for the respondent vide separate statement raised no objection if prayer of the petitioner is allowed and

petition is allowed to be withdrawn. Statements recorded and placed on file. In view of the statements so made by the parties as stated above, the claim petition/reference no.233/14 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.

5. The file, after completion be consigned to the records.

Announced:
21-11.2016

(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 233/2014

Sh. Gorkh Singh s/o Sh. Dina Nath, Village Ujhan, P.O. Didwin, Tehsil Barsar, Distt. Hamirpur, H.P. ...*Petitioner.*

Versus

1. The Registrar Dr.Y.S. Parmar University Horticulture & Forestry Nauni, Distt. Solan, H.P.

2. The Director, Regional Horticulture and Forestry Research Station Bhota, Distt. Hamirpur, H.P. ...*Respondents.*

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Heard. Authorised representative for the petitioner has made statement for withdrawal of claim petition pending before this Court due to incorrect date of termination mentioned in the claim petition. He has specifically stated that he wants to agitate again before the Competent Authority with liberty to file fresh claim. Admitting statement of petitioner as stated above ld. csl. for the respondent vide separate statement raised no objection if prayer of the petitioner is allowed and petition is allowed to be withdrawn. Statements recorded and placed on file. In view of the statements so made by the parties as stated above, the claim petition/reference no.233/14 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.

5. The file, after completion be consigned to the records.

Announced:
21-11.2016

(K.K.SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 402/2015
Date of Institution : 10.09.2015
Date of Decision : 28.11.2016

Shri Roshan Lal s/o Shri Gurdev, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Roshan Lal S/O Shri Gurdev, R/O Village Thandal, Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated nil-received on 07.05.2012 regarding his alleged illegal termination of service during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Roshan Lal S/O Shri Gurdev, R/O Village Thandal, Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I&PH/HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1990 who continuously worked till September, 2004 with the respondent/ department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/ department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1990 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2000 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been

denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during September, 2004 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

7. If issue no.1 or issue no. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

8. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes

Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 who continuously worked till 2004 with the respondent/ department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically

admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 161 days in the year 1992, 173 days in 1993, 120 days in 1994, 171 days in 1995, 204 days in 1996, 169 days in 1997, 130 days in 1998, 152 days in 1999, 122 days in 2000, 42 days in 2001, 62 days in 2002, 116 days in 2003 and 99 days in 2004 and thus a total of his service in 1992 to 2004 in 13 years he had worked for 1721 days in his entire service period. Be it noticed that except the years 1994 and 1998 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from Ex. RW1/B the mandays chart showing that petitioner to have worked for 107 days only in preceding 12 calendar months from termination and thus had not rendered service of 160 days required to establish so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1995 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1990 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders

of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding

the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice

and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon□ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 13 years and actually worked for 1721 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years i.e. demand notice was given on dated nil. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 48 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 459/2015
Date of Institution : 29.10.2015
Date of Decision : 28.11.2016

Ms. Souni Devi d/o late Shri Bheem Sain, r/o Village V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, Killar Division, H.P.P.W.D. Killar, (Pangi), District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Ms. Souni Devi D/O Late Shri Bheem Sain, R/O V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, (Pangi) District Chamba, H.P. vide demand notice dated 23.7.2008 regarding her alleged illegal termination of service during October, 2001 suffers from delay and latches? If not, Whether termination of the services of Ms. Souni Devi D/O Late Shri Bheem Sain, R/O V.P.O. Sahali, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, (Pangi) District Chamba, H.P. during October, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1994 who continuously worked till October, 2001 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2001 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of October, 2001 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted.

The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2001. She further prayed for reinstatement in service w.e.f. month of October, 2001 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between September, 1994 to October, 2001 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2003 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2001 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 18.5.2016 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23.07.2008 qua her termination of service during October, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent w.e.f. October, 2001 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the 1994 who continuously worked till 2001 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba

District and remained engaged from 1994 to October, 2001. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2008 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 133 days in the year 1994, 101.5 days in 1996, 162 days in 1997, 133 days in 1998, 120 days in 1999, 125 days in 2000 and 103 days in 20011 and thus a total of her service in 1994 to 2001 in 7 years she had worked for 877.5 days in her entire service period. Be it noticed that except the years 1994, 1996 and 1998 to 2001 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from Ex. RW1/B the mandays chart showing that petitioner to have worked for 128 days only in preceding 12 calendar months from termination and thus had not rendered service of 160 days required to establish so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999

and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2001, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated

here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material

evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D. Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial

dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 7 years and actually worked for 877.5 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about seven years i.e. demand notice was given on 23.7.2008. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 35 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 455/2015
Date of Institution : 29.10.2015
Date of Decision : 28.11.2016

Smt. Man Dei w/o Shri Jeevan Ram, r/o V.P.O. Purthi, Tehsil Pangi, District Chamba, H.P.
...Petitioner.

Versus

Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Killar, (Pangi), District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Smt. Man Dei W/O Shri Jeevan Ram, R/O V.P.O. Purthi, Tehsil Pangi, District Chamba, H.p. before the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 02-02-2012 regarding her alleged illegal termination of services during September, 2005 suffers from delay and latches? If not, Whether termination of services of Smt. Man Dei W/O Shri Jeevan Ram, R/O V.P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during September, 2005, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the year 1998 who continuously worked till September, 2005 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service in the end of September, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 23 persons who were junior to petitioner and joined service from 1st June, 1998 to 1st September, 2007. In the end of month of September, 2005 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2005. She further prayed for reinstatement in service w.e.f. month of September, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1998 to September, 2005 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2006 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu

thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2005 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.4.2016 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02-02-2012 qua her termination of service during September, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent *w.e.f.* September, 2005 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,20,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the 1998 who continuously worked till 2005 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to October, 2005. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in

cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 172 days in the year 1998, 101 days in 1999, 30 days in 2000, 148 days in 2001, 95 days in 2002, 106 days in 2003, 90 days in 2004 and 115 days in 2005 and thus a total of her service in 1998 to 2005 in 8 years she had worked for 857 days in her entire service period. Be it noticed that except the years 1999 to 2005 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from Ex. RW1/B the mandays chart showing that petitioner to have worked for 115 days only in preceding 12 calendar months from termination and thus had not rendered service of 160 days required to establish so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.6.1998 to 01.9.2007 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2005 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to

petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2005, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial

discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 857 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about seven years i.e. demand notice was given on 02.02.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 36 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 271/2015
Date of Institution : 08.7.2015
Date of decision : 28.11.2016

Smt. Sakina Devi w/o late Shri Birbal Siingh, r/o Village Chakaroda, P.O. Khaddhar, Tehsil Ladbharol, District Mandi, H.P. ...*Petitioner.*

Versus

The Executive Engineer H.P.P.W.D. (B&R) Division, Joginder Nagar, Distt. Mandi, H.P. ...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Smt. Sakina Devi W/O Late Shri Birbal Singh R/O Village Chakaroda, P.O. Khaddhar, Tehsil Ladbharol, District Mandi, H.P. during January, 1998 to 31-08-2007 by the Executive Engineer, H.P.P.W.D., (B&R) Division Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.01.1998 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. The respondent contested claim petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non-joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from January, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand,

repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Sharma, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination :

1. Whether time to time termination of the services of the petitioner by the respondent during January, 1998 to 31.8.2007 is/was improper and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ...*OPR.*

4. Whether the petition is bad for non-joinder of necessary parties as alleged? ...*OPR.*

5. Whether the claim petition is bad on account of delay and laches on the part of the claimant as alleged. ...*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No
Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent in the year 1999 is not in dispute. It is the admitted case of petitioner that she had worked since 1999 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 190 days, 221 days in 2000, 187 days in 2001, 214 days in 2002, 110 days in 2003, 164 days in 2004, 157 days in 2005, 158 days in 2006, 202 days in 2007, 360 days in 2008, 361 days in 2009, 356 days in 2010, 348 days in 2011, 354 days in 2012, 361 days in 2013, 361 days in 2014 and 88 days in 2015. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in the year 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri Rajeev Sharma has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no

notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service except back wages in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in cross-examination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/B shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were

illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that :

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. Be it noticed that no material has been placed on record by the respondent to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement and that breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 434/2015
Date of Institution : 05.10.2015
Date of decision : 28.11.2016

Shri Kuldeep Chand s/o Shri Chingu Ram, r/o Village Kaflon, P.O. Gangoti, Tehsil Ladbharol, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Joginder Nagar, Distt. Mandi, H.P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication :

> "Whether time to time termination of the services of Shri Kuldeep Chand S/O Shri Chingu Ram R/O Village Kaflon, P.O. Gangoti, Tehsil Ladbharol, District Mandi, H.P. during November, 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.11.2001 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for

the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from November, 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of „last come first go and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Sharma, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 23.4.2016 for determination :

1. Whether time to time termination of the services of the petitioner by the respondent during November, 2001 to 31.8.2007 is/was improper and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ...*OPR.*

4. Whether the petition is bad for non-joinder of necessary parties as alleged? ...*OPR.*

5. Whether the claim petition is bad on account of delay and laches on the part of the claimant as alleged.? ...*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows :

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No
Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent November, 2001 is not in dispute. It is the admitted case of petitioner that he had worked since November, 2001 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 29 days, 172 days in 2002, 167 days in 2003, 169 days in 2004, 165 days in 2005, 150 days in 2006, 232 days in 2007, 353 days in 2008, 357 days in 2009, 363 days in 2010, 363 days in 2011, 363 days in 2012, 365 days in 2013, 363 days in 2014 and 90 days in 2015. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos.3,6, and 7 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in November, 2001, he ought to have been regularized having continuously worked for about 6 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other

persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross-examination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri Rajeev Sharma has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 3,6 and 7. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service except back wages in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on

record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/B shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as Divisional Manager vs. Mohinder Kumar, there was a delay of 14 years. In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of*

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

18. Be it noticed that no material has been placed on record by the respondent to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement and that breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits except back wages. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2016.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 207/2015
Date of Institution : 15.05.2015
Date of Decision : 29.11.2016

Shri Gassi Lal s/o Shri Prem Chand, r/o Village Hudan Bhatori, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Gassi Lal S/O Shri Prem Chand, R/O Village Hudan Bhatori, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 12.01.2012 regarding his alleged illegal termination of service during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Shri Gassi Lal S/O Shri Prem Chand, R/O Village Hudan Bhatori, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H/H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily paid beldar in IPH Department Pangi in the year 1994 who worked till 2004 with the respondent/department. It is alleged that the petitioner could not be worked with the respondent in the years 1991, 1993, 1994, 1996 and 1997 respectively due to which the respondent had not provided him to work although the work was available with the respondent/department. It is stated that during the service period of petitioner he had worked for 81 days in the year 1990, 57 days in 1992, 28 days in 1995, 74 days in 1998, 139 days in 1999, 55 days in 2000, 104 days in 2001, 109 days in 2002, 68 days in 2003 and 47 days in 2004 with the respondent. Averments made in the petition further revealed that Pangi is a tribal and snow bound area and no effective work was available with the respondent w.e.f. November to May but the petitioner had worked for maximum days and the services of petitioner were dispensed with in the year 2001 without any reason and prior notice and no procedure had been followed by the respondent/department. It is alleged that petitioner had worked for more than 100 days during the months as per availability of work and petitioner is entitled for regularization as per policy of the government and law laid down by the Hon'ble Apex Court as well as the Hon'ble High Court of Himachal Pradesh. It is contended that respondent had not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) while disengaging the services of petitioner. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged persons junior to the petitioner and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is stated that petitioner belongs to BPL family and completed 45 years of age no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. He prayed for reengagement of petitioner in service along-with back wages, and other consequential service benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1990 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. It is contended that the services of petitioner had not been terminated by the respondent but petitioner left the job of his own will. It is stated that the petitioner had not completed 160 days of continuous service in each calendar year and he did not fulfill the criteria as envisaged under Section 25-B of the Act and also petitioner did not complete criteria for regularization as petitioner had not worked for 160 days in each calendar year. It is denied that respondent had never violated the provisions of Section 25-G of the Act. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. It is also contended that if petitioner had been terminated in 2001 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.11.2015 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 12.1.2012 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of services of the petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed
Issue No.2 : No

Issue No.3 : No
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is relevant to mention here that the petitioner has failed to establish having worked for 160 days continuously preceding his termination even while working in tribal area of Killar (Pangi). Similarly, petitioner has also failed to establish that junior persons have been retained in service and the services of petitioner were disengaged in violation of the provisions of Section 25-G of the Industrial Disputes Act, 1947 as the petitioner has not produced on record any seniority list establishing that the workers were engaged in particular years as mentioned and they continued to worked till the termination of the services of petitioner. Equally important to mention here is that petitioner has failed to establish that the juniors were retained and services of petitioner had been terminated. As such, there could be no requirement of issuance of notice for reemployment of petitioner and therefore it cannot be stated that the provisions of Sections 25-G and 25-H of the Industrial Disputes Act had been violated. To appreciate the pleas of petitioner, it would be relevant to through the evidence led by petitioner in support of his claim.

12. Stepping into witness box as PW1, petitioner has deposed on oath to have worked for 160 days in each year he remained engaged with respondent which is contrary to stipulation made in mandays chart Ex. RW1/B showing that petitioner had worked from 1990 till 2004 and in the year 2004 he has merely worked for 47 days in the months of August and September and prior to it, he was not engaged by the respondent in the months of January to April however he was engaged in May and when worked for 10 days, 29 days in June and 29 days in July aggregating to 68 days in the year 2003. It can be seen from this mandays chart that petitioner had not actually worked 160 days in preceding 12 months of his termination as was required so as to establish for applicability of Section 25-B of the Industrial Disputes Act and consequently violation of Section 25-F for having not issued any notice by the respondent before terminating his services. Although, petitioner on oath has maintained that no notice was issued by the respondent while terminating his services but it was not the requirement of the law as petitioner had never worked for 160 days preceding his date of termination although in different years he had worked for number of days but those days could not be counted for the purpose of 160 days as break period exist in between. The petitioner has denied in cross-examination that he had left the job of his own but he has not established to have worked for 160 days as stated above in the tribal area as was required under law. The plea of abandonment of the termination ceases to have significance as no notice was required to be issued by the respondent. As such, it may not be erroneous to conclude that respondent was not required to comply with the provisions of Section 25-F by issuance of legal notice before terminating the services of petitioner.

13. In so far in the plea of the petitioner having been removed from service by the respondent and retention of juniors or reengaging them to so that they completed 160 days is concerned, this plea is also not proved in as much as the petitioner has failed to produce any seniority list by which it could be established that persons junior to him were appointed by the respondent/department. In cross-examination of petitioner he has denied that no juniors to him have not been retained but the plea was taken by petitioner has not been established by reliable evidence and uncorroborated testimony of the petitioner cannot be relied so as to hold that the respondent

had retained juniors and regularized them in service by allowing them to complete 160 days in tribal area of Pangi. No witness had been examined by petitioner to prove that junior to petitioner was engaged after termination of services of petitioner. At the same time, no documentary evidence has been led which would further corroborate or support the plea of the petitioner on termination without notice rather respondent too has pleaded plea of abandonment which is also not proved as no corresponding evidence has been proved showing issuance of notice on unauthorized absence of petitioner. Since respondent has failed to prove by cogent and reliable evidence that petitioner abandoned the job, plea of termination of petitioner can be safely accepted.

14. Be it noticed that there is no merit in the allegation of the petitioner that respondent had violated the provisions of Section 25-G of the Industrial Disputes Act irrespective of the fact that there is no requirement of the law that the petitioner should have worked 160 days yet he was not absolved of responsibility to establish that some junior persons were retained and he was not offered for reengagement. Accordingly, it is held that the respondent had not violated the provisions of Section 25-H of the Industrial Disputes Act as principle of 'Last come First go' was not proved to have been not followed. Since none of the provisions of Section 25-F, 25-G and 25-H have been violated by the respondent, this Tribunal is left with no option but answer the issues no.2 and 3 in negative.

15. On the point of delay in issuance of legal notice to the respondent, it would be relevant to mention here that the services of petitioner had been terminated in 2004 whereas petitioner had issued legal notice dated nil which goes to suggest that petitioner had issued legal notice and there was no explanation of delay. Keeping in view the mandate of Hon'ble Apex Court in various judgments wherein it has been held that delay in raising industrial dispute is definitely an important circumstance to be considered by court but not fatal to claim of petitioner and court has to keep in mind while exercising discretion as has also been observed in para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been done and the delay in raising industrial dispute before grant of relief in an industrial dispute. But to my mind petitioner has not proved violation of any of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as stated above and for that reason he would not be entitled for relief of reinstatement as claimed by the petitioner or even for lump compensation as has been awarded by this Tribunal in various cases of similar nature. Thus, the petition is held to be not maintainable as petitioner has failed to establish violation of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act by respondent who is also held not entitled even for lump sum compensation in lieu of service rendered by him. Issue no.1 is decided as discussed whereas issues no. 2 and 3 are answered in negative and issue no.4 answered in affirmative. All these issues are decided against the petitioner and in favour of respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 231/2015
Date of Institution : 27.05.2015
Date of Decision : 29.11.2016

Shri Trilok Singh s/o Shri Gullu Ram, r/o Village Tundru, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Trilok Singh S/O Shri Gullu Ram, R/O Village Tundru, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated-nil-received on 31.10.2011 regarding his alleged illegal termination of service during October, 2001 suffers from delay and latches? If not, Whether termination of the services of Shri Trilok Singh S/O Shri Gullu Ram, R/O Village Tundru, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H/H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during October 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily paid beldar in IPH Department Pangi in the

year 1994 and worked as such utpo 2001 without any break. It is stated that during the service period of petitioner he had worked for 114 days in the year 1994, 107 days in 1995, 95 days in 1996, 162 days in 1997, 117 days in 1998, 113 days in 1999, 107 days in 2000 and 140 days in 2001 with the respondent. Averments made in the petition further revealed that Pangi is a tribal and snow bound area and no effective work was available with the respondent w.e.f. November to May but the petitioner had worked for maximum days and the services of petitioner were dispensed with in the year 2001 without any reason and prior notice and no procedure had been followed by the respondent/department. It is alleged that petitioner had worked for more than 100 days during the months as per availability of work and petitioner is entitled for regularization as per policy of the government and law laid down by the Hon'ble Apex Court as well as the Hon'ble High Court of Himachal Pradesh. It is contended that respondent had not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) while disengaging the services of petitioner. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged persons junior to the petitioner and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is stated that petitioner belongs to BPL family and completed 45 years of age no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. He prayed for reinstatement in service along-with back wages, and other consequential service benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. It is contended that the services of petitioner had not been terminated by the respondent but petitioner left the job of his own will. It is stated that the petitioner had not completed 160 days of continuous service in each calendar year and he did not fulfill the criteria as envisaged under Section 25-B of the Act and also petitioner did not complete criteria for regularization as petitioner had not worked for 160 days in each calendar year. It is denied that respondent had never violated the provisions of Section 25-G of the Act. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. It is also contended that if petitioner had been terminated in 2001 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.11.2015 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during October, 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of services of the petitioner by the respondent during October, 2001 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed
Issue No.2 : No
Issue No.3 : No
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is relevant to mention here that the petitioner has failed to establish having worked for 160 days continuously preceding his termination even while working in tribal area of Killar (Pangi). Similarly, petitioner has also failed to establish that junior persons have been retained in service and the services of petitioner were disengaged in violation of the provisions of Section 25-G of the Industrial Disputes Act, 1947 as the petitioner has not produced on record any seniority list establishing that the workers were engaged in particular years and they continued to worked till the termination of the services of petitioner. Equally important to mention here is that petitioner has failed to establish that the juniors were retained and services of petitioner had been terminated. As such, there could be no requirement of issuance of notice for reemployment of petitioner and therefore it cannot be stated that the provisions of Sections 25-G and 25-H of the Industrial Disputes Act had been violated. To appreciate the pleas of petitioner, it would be relevant to through the evidence led by petitioner in support of his claim.

12. Stepping into witness box as PW1, petitioner has deposed on oath to have worked for 160 days in each year he remained engaged with respondent which is contrary to stipulation made in mandays chart Ex. RW1/B showing that petitioner had worked from 1994 till 2001 and in the year 2001 he has merely worked for 140 days in the months of June, July, August and September and prior to it, he was not engaged by the respondent in the months of January to May however he was engaged in June and when worked for 25 days, 27 days in July, 27 days in August and 28 days

in September aggregating to 107 days in the year 2000. It can be seen from this mandays chart that petitioner had not actually worked 160 days in preceding 12 months of his termination as was required so as to establish for applicability of Section 25-B of the Industrial Disputes Act and consequently violation of Section 25-F for having not issued any notice by the respondent before terminating his services. Although, petitioner on oath has maintained that no notice was issued by the respondent while terminating his services but it was not the requirement of the law as petitioner had never worked for 160 days preceding his date of termination although in different years he had worked for number of days but those days could not be counted for the purpose of 160 days as break period exist in between. The petitioner has denied in cross-examination that he had left the job of his own but he has not established to have worked for 160 days as stated above in the tribal area as was required under law. The plea of abandonment of the termination ceases to have significance as no notice was required to be issued by the respondent. As such, it may not be erroneous to conclude that respondent was not required to comply with the provisions of Section 25-F by issuance of legal notice before terminating the services of petitioner.

13. In so far in the plea of the petitioner having been removed from service by the respondent and retention of juniors or reengaging them to so that they completed 160 days is concerned, this plea is also not proved in as much as the petitioner has failed to produce any seniority list by which it could be established that persons junior to him were appointed by the respondent/department. In cross-examination of petitioner he has denied that no juniors to him have not been retained but the plea was taken by petitioner has not been established by reliable evidence and uncorroborated testimony of the petitioner cannot be relied so as to hold that the respondent had retained juniors and regularized them in service by allowing them to complete 160 days in tribal area of Pangi. No witness had been examined by petitioner to prove that junior to petitioner was engaged after termination of services of petitioner. At the same time, no documentary evidence has been led which would further corroborate or support the plea of the petitioner on termination without notice rather respondent too has pleaded plea of abandonment which is also not proved as no corresponding evidence has been proved showing issuance of notice on unauthorized absence of petitioner. Since respondent has failed to prove by cogent and reliable evidence that petitioner abandoned the job, plea of termination of petitioner can be safely accepted.

14. Be it noticed that there is no merit in the allegation of the petitioner that respondent had violated the provisions of Section 25-G of the Industrial Disputes Act irrespective of the fact that there is no requirement of the law that the petitioner should have worked 160 days yet he was not absolved of responsibility to establish that some junior persons were retained and he was not offered for reengagement. Accordingly, it is held that the respondent had not violated the provisions of Section 25-H of the Industrial Disputes Act as principle of 'Last come First go' was not proved to have been not followed. Since none of the provisions of Section 25-F, 25-G and 25-H have been violated by the respondent, this Tribunal is left with no option but answer the issues no.2 and 3 in negative.

15. On the point of delay in issuance of legal notice to the respondent, it would be relevant to mention here that the services of petitioner had been terminated in 2001 whereas petitioner had issued legal notice dated nil which goes to suggest that petitioner had issued legal notice and there was no explanation of delay. Keeping in view the mandate of Hon'ble Apex Court in various judgments wherein it has been held that delay in raising industrial dispute is definitely an important circumstance to be considered by court but not fatal to claim of petitioner and court has to keep in mind while exercising discretion as has also been observed in para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service,

the ground on which termination has been done and the delay in raising industrial dispute before grant of relief in an industrial dispute. But to my mind petitioner has not proved violation of any of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as stated above and for that reason he would not be entitled for relief of reinstatement as claimed by the petitioner or even for lump compensation as has been awarded by this Tribunal in various cases of similar nature. Thus, the petition is held to be not maintainable as petitioner has failed to establish violation of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act by respondent who is also held not entitled even for lump sum compensation in lieu of service rendered by him. Issue no.1 is decided as discussed whereas issues no. 2 and 3 are answered in negative and issue no.4 answered in affirmative. All these issues are decided against the petitioner and in favour of respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 325/2015
Date of Institution : 21.07.2015
Date of Decision : 29.11.2016

Shri Harnam Singh s/o Shri Duni Chand, r/o Village Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

> "Whether the industrial dispute raised by the worker Shri Harnam Singh S/O Shri Duni Chand, R/O Village Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated-nil-received on 31.10.2011 regarding his alleged illegal termination of service during October, 2005 suffers from delay and latches? If not, Whether termination of the services of Shri Harnam Singh S/O Shri Duni Chand, R/O Village Bhatwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H/H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during October 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily paid beldar in IPH Department Pangi in the year 1994 and worked as such utpo 2005 and petitioner had completed more than 160 days of work with the respondent. Averments made in the petition further revealed that Pangi is a tribal and snow bound area and no effective work was available with the respondent w.e.f. November to May but the petitioner had worked for maximum days and the services of petitioner were dispensed with in the year 2005 without any reason and prior notice and no procedure had been followed by the respondent/department. It is alleged that petitioner had worked for maximum days during the months as per availability of work and petitioner is entitled for regularization as per policy of the government and law laid down by the Hon'ble Apex Court as well as the Hon'ble High Court of Himachal Pradesh. It is contended that respondent had not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) while disengaging the services of petitioner. The grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged persons junior to the petitioner and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is stated that petitioner belongs to BPL family and completed 45 years of age no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. He prayed for reinstatement in service along-with back wages, and other consequential service benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. It is contended that the services of petitioner had not been terminated by the respondent but petitioner left the job of his own will. It is stated that the petitioner had not completed 160 days of continuous service in each calendar year and he did not fulfill the criteria as envisaged under Section 25-B of the Act and also petitioner did not complete criteria for regularization as petitioner had not worked for 160 days in each calendar year. It is denied that

respondent had never violated the provisions of Section 25-G of the Act. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. It is also contended that if petitioner had been terminated in 2001 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.11.2015 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during October, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of services of the petitioner by the respondent during October, 2005 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed
Issue No.2 : No
Issue No.3 : No
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is relevant to mention here that the petitioner has failed to establish having worked for 160 days continuously preceding his termination even while working in tribal area of Killar (Pangi). Similarly, petitioner has also failed to establish that junior persons have been retained in service and the services of petitioner were disengaged in violation of the provisions of Section 25-G of the Industrial Disputes Act, 1947 as the petitioner has not produced on record any seniority list establishing that the workers were engaged in particular years as mentioned and they continued to worked till the termination of the services of petitioner. Equally important to mention here is that petitioner has failed to establish that the juniors were retained and services of petitioner had been terminated. As such, there could be no requirement of issuance of notice for reemployment of petitioner and therefore it cannot be stated that the provisions of Sections 25-G and 25-H of the Industrial Disputes Act had been violated. To appreciate the pleas of petitioner, it would be relevant to through the evidence led by petitioner in support of his claim.

12. Stepping into witness box as PW1, petitioner has deposed on oath to have worked for 160 days in each year he remained engaged with respondent which is contrary to stipulation made in mandays chart Ex. RW1/B showing that petitioner had worked from 1995 till 2005 and in the year 2005 he has merely worked for 85 days in the months of July, August, September and October and prior to it, he was not engaged by the respondent in the months of January to May however he was engaged in June and when worked for 30 days, 31 days in July, 26 days in August and 19 days in September aggregating to 108 days in the year 2004. It can be seen from this mandays chart that petitioner had not actually worked 160 days in preceding 12 months of his termination as was required so as to establish for applicability of Section 25-B of the Industrial Disputes Act and consequently violation of Section 25-F for having not issued any notice by the respondent before terminating his services. Although, petitioner on oath has maintained that no notice was issued by the respondent while terminating his services but it was not the requirement of the law as petitioner had never worked for 160 days preceding his date of termination although in different years he had worked for number of days but those days could not be counted for the purpose of 160 days as break period exist in between. The petitioner has denied in cross-examination that he had left the job of his own but he has not established to have worked for 160 days as stated above in the tribal area as was required under law. The plea of abandonment of the termination ceases to have significance as no notice was required to be issued by the respondent. As such, it may not be erroneous to conclude that respondent was not required to comply with the provisions of Section 25-F by issuance of legal notice before terminating the services of petitioner.

13. In so far in the plea of the petitioner having been removed from service by the respondent and retention of juniors or reengaging them to so that they completed 160 days is concerned, this plea is also not proved in as much as the petitioner has failed to produce any seniority list by which it could be established that persons junior to him were appointed by the respondent/department. In cross-examination of petitioner he has denied that no juniors to him have not been retained but the plea was taken by petitioner has not been established by reliable evidence and uncorroborated testimony of the petitioner cannot be relied so as to hold that the respondent had retained juniors and regularized them in service by allowing them to complete 160 days in tribal area of Pangi. No witness had been examined by petitioner to prove that junior to petitioner was engaged after termination of services of petitioner. At the same time, no documentary evidence has been led which would further corroborate or support the plea of the petitioner on termination without notice rather respondent too has pleaded plea of abandonment which is also not proved as no corresponding evidence has been proved showing issuance of notice on unauthorized absence of petitioner. Since respondent has failed to prove by cogent and reliable evidence that petitioner abandoned the job, plea of termination of petitioner can be safely accepted.

14. Be it noticed that there is no merit in the allegation of the petitioner that respondent had violated the provisions of Section 25-G of the Industrial Disputes Act irrespective of the fact that there is no requirement of the law that the petitioner should have worked 160 days yet he was

not absolved of responsibility to establish that some junior persons were retained and he was not offered for reengagement. Accordingly, it is held that the respondent had not violated the provisions of Section 25-H of the Industrial Disputes Act as principle of 'Last come First go' was not proved to have been not followed. Since none of the provisions of Section 25-F, 25-G and 25-H have been violated by the respondent, this Tribunal is left with no option but answer the issues no.2 and 3 in negative.

15. On the point of delay in issuance of legal notice to the respondent, it would be relevant to mention here that the services of petitioner had been terminated in 2005 whereas petitioner had issued legal notice dated nil which goes to suggest that petitioner had issued legal notice and there was no explanation of delay. Keeping in view the mandate of Hon□ble Apex Court in various judgments wherein it has been held that delay in raising industrial dispute is definitely an important circumstance to be considered by court but not fatal to claim of petitioner and court has to keep in mind while exercising discretion as has also been observed in para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been done and the delay in raising industrial dispute before grant of relief in an industrial dispute. But to my mind petitioner has not proved violation of any of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as stated above and for that reason he would not be entitled for relief of reinstatement as claimed by the petitioner or even for lump compensation as has been awarded by this Tribunal in various cases of similar nature. Thus, the petition is held to be not maintainable as petitioner has failed to establish violation of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act by respondent who is also held not entitled even for lump sum compensation in lieu of service rendered by him. Issue no.1 is decided as discussed whereas issues no. 2 and 3 are answered in negative and issue no.4 answered in affirmative. All these issues are decided against the petitioner and in favour of respondent.

*RELIE*F

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 341/2015
Date of Institution : 05.08.2015
Date of Decision : 29.11.2016

Ms. Bhag Dei d/o Shri Prem Singh, r/o Village Chhow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Ms. Bhag Dei D/O Shri Prem Singh, R/O Village Chhow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 02.022012 regarding her alleged illegal termination of service during August, 2004 suffers from delay and latches? If not, Whether termination of the services of Ms. Bhag Dei D/O Shri Prem Singh, R/O Village Chhow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, HPPWD Division, Killar, Tehsil Pangi, District Chamba, H.P. during August, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1994 who continuously worked till August, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service in the end of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on

muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/ respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 2004. She further prayed for reinstatement in service w.e.f. month of August, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1994 to August, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 17.12.2015 for determination which are as under :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02.02.2012 qua her termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent w.e.f. August, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

10. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 1994 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work

intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner□s termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from May, 1994 to August, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 163 days in the year 1994, 114 days in 1995, 123 days in 1996, 135 days in 1997, 89 days in 1998, 70 days in 1999, 77 days in 2001, 41 days in 2002, 59 days in 2003 and 30 days in 2004 and thus a total of her service in 1994 to 2004 in 10 years she had worked for 901 days in her entire service period. Be it noticed that except the years 1195 to 2004 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of

artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 30 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act. Ld. Dy. D.A. representing respondent has contended that in the claim petition Bhag Dei has been shown as daughter of Shri Prem Singh whereas the mandays chart shows that Bhag Dei as wife of Shri Ram Nath, r/o Village Chhow, P.O. Purthi, Tehsil Pangi, District Chamba, in mandays chart Ex. RW1/B. Ld. Authorized Representative for the petitioner on the other hand representing petitioner has contended that as per claim petition the petitioner was shown unmarried daughter of Shri Prem Singh whereas during the pendency of claim petition she had got married with Ram Nath. Be it noticed that respondent has failed to controvert plea of marriage of petitioner during pendency of claim petition and as such, it cannot be stated that said Bhag Dei is not wife of Shri Ram Nath or that she was not Bhag Dei daughter of Shri Prem Singh. Thus, Bhag Dei is same person whose service had been terminated by respondent.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co-workers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section

25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of

adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in

the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac

directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 901 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about 8 years i.e. demand notice was given on 02.02.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 44 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO. 4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 446/2015
Date of Institution : 29.10.2015
Date of Decision : 29.11.2016

Shri Gian Chand s/o Shri Sham Lal, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. …*Petitioner.*

Versus

Executive Engineer, I.&P.H/H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

> "Whether the industrial dispute raised by the worker Shri Gian Chand S/O Shri Sham Lal, R/O Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 11-04-2012 regarding his alleged illegal termination of services during December,1992 suffers from delay and latches? If not, Whether termination of services of Shri Gian Chand, S/O Shri Sham Lal, R/O Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during December, 1992 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the year 1985 who continuously worked till October, 1993 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing any one month notice in writing indicating the reason for retrenchment besides no retrenchment compensation was paid to petitioner while respondent had illegally terminated his service. It is contended that respondent had not followed the provisions of Section 25-F of the Act while disengaging the services of petitioner. It is stated that petitioner is very poor and no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. Grievance of petitioner further remains that when the services of petitioner have been terminated, respondent/department had reengaged number of new workman from time to time and respondent had not followed the principle of „Last come, First go' as envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner and who are still in service with the respondent namely Mohan Lal who appointed in 1990, Suraj Ram in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2004. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 1993 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 1993. He

further prayed for reinstatement in service w.e.f. month of October, 1993 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1985 to October, 1993 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.1996 having completed 10 years of service and per the policy of HP Govt. in pursuance to law settled by Hon'ble High Court of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1989 who remained engaged till 1992 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1992 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice dated Ex. PW1/B, copy of reply to the demand notice Ex. PW1/C, copy of order Ex. PW1/D and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D5 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 16.2.2016 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 11.04.2012 qua his termination of service during December, 1992 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of services of the petitioner by the respondent during December, 1992 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	Discussed
Issue No.4 :	No
Relief. :	Petition is partly allowed awarding compensation Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1988 continuously worked till December, 1992 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1988 to December, 1992. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in December, 1992 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service,

no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon□ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after December, 1992. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 134 days in the year 1988, 122 days in 1989, 270 days in 1990, 154 days in 1991 and 214 days in 1992 and thus a total of his service in 1988 to 1992 in 5 years he had worked for 894 days in his entire service period. Be it noticed that except the years 1988 and 1989 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B which shows that in the year 1992 the petitioner had worked for 214 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was required from respondent to have issued a notice envisaged under Section 25-F of the Act but the respondent had not done the same. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after December, 1992 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers

mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1988 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex RW1/C5. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D5 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in December, 1992, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir

Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference :

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

> 15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1992 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld.

counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference :

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC supra, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and

another vs. Chaman Singh relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 5 years and actually worked for 894 days as per mandays chart on record and that the services of petitioner were disengaged in December, 1992 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about nineteen years. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013.

23. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 174/2015
Date of Institution : 04.04.2015
Date of Decision : 29.11.2016

Shri Thanu Lal s/o Shri Thungu Ram, r/o Village and Post Office Rei, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Thanu Lal S/O Shri Thungu Ram, R/O Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 18.08.2010 regarding his alleged illegal termination of service w.e.f. September, 2005 suffers from delay and latches? If not, Whether termination of the service of Shri Thanu Lal S/O Shri Thungu Ram, R/O Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. September, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1992 who continuously worked till September, 2005 with the respondent/ department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/ department had terminated/disengaged petitioner from daily wage service in the end of September, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of

petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2005. He further prayed for reinstatement in service w.e.f. month of September, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1992 to September, 2005 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2000 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/M mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.1.2016 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 18.8.2010 qua his termination of service during September, 2005 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of the services of petitioner by the respondent during September, 2005 is/was illegal and unjustified as alleged? ...*OPP.*

9. If issue no.1 or issue no. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

10. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed
Issue No.2 : No
Issue No.3 : No
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into witness box as PW1 petitioner has proved on record his affidavit Ex. PW1/A stipulating therein that he had worked on muster roll on daily wage basis beldar without any appointment letter from May, 1992 till September, 2005 and in between services of petitioner had been engaged and reengaged by giving fictional breaks so that he did not complete 160 days preceding 12 months as well as for regularization of his services. Before accepting the statement made by the petitioner, it would relevant to refer to mandays chart prepared by Executive Engineer, Killar Division, HPPWD Killar (Pangi) which shows that petitioner had worked from 1992 to 2003. A bare glance at the mandays chart would reveal that petitioner had worked for 96 days in the year 2003 and prior to it 79 days in the year 2002 but he had not continuously worked for 160 days as in the year 2003 he had worked for 96 days. In the months of July, August, September and October, 2002 he was reengaged for period of 79 days i.e. 31 days in August, 25 days in September and 23 days in October in the year 2002. This evidence goes to show that the petitioner had not factually worked continuously for 160 days as claimed by him. Contrary to the claim of the petitioner as well as his affidavit Ex. PW1/A showed that petitioner had worked from 1992 to 200 and the reference received from appropriate government shows that petitioner had worked till September, 2005 which contradictory to claim of petitioner. If the petitioner had worked till 2005 how could he be

shown to have worked till 2003 which falsified plea of petitioner and for said reason, the reference is answered in negative because petitioner till the date of order of petition had not prayed for issuance for corrigendum and appears to be working till 2003 and not 2005. Consequently, this court cannot go beyond the terms of reference. Delay of seven years in filing the demand notice cannot be stated to be fatal so as to negate the claim of petitioner in view of various judgments of Hon'ble Apex Court in which it has been held that delay in raising demand notice would not affect the right of compensation as this court has to look into merits of this case. Since mandays chart Ex. RW1/B manifestly shows that petitioner had not worked for 160 days in preceding 12 months from date of his termination and thus there was no requirement of issuance of any notice envisaged under Section 25-F of the Industrial Disputes Act at the same time there is no iota of evidence on list of seniority in favour of petiitoner. Accordingly, it is held that there is no violation of Section 25-F of the Industrial Disputes Act more particularly provisions of Section 25-B of the Industrial Disputes Act was not attracted in this case. Similarly, provisions of Sections 25-F of the Industrial Disputes Act, could not be stated to have been violated as it has not been proved by the petitioner.

12. Ld. Dy. D.A. for respondent has pointed out that petitioner has claimed to have worked till 2003 and his plea gets falsified from mandays chart Ex. RW1/B. He has also contended that there could not be explanation of delay as the petitioner continued to work much after 2003. As such, no conclusion can be drawn for holding delay and laches rather petitioner is held to have worked much after 2003 and that his claim that notice for termination was issued much late is of no consequence on the merits of case and for similar reasons, petition is held to be not maintainable. Issue no.1 is decided as discussed, issues no.2 and 3 are answered negative and issue no.4 is answered in affirmative in favour of respondent and against the petitioner.

RELIEF

13. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

14. The reference is answered in the aforesaid terms.

15. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

16. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 77/2015
Date of Institution : 25.02.2015
Date of Decision : 29.11.2016

Shri Dev Raj s/o Shri Roshan Lal, r/o Village Tundru, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Dev Raj S/O Shri Roshan Lal, R/O Village Tundru, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated nil (received in Labour Office Chamba dated on 25.05.2012) regarding his alleged illegal termination of service during June, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Dev Raj S/O Shri Roshan Lal, R/O Village Tundru, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during June, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily paid beldar in IPH Department Pangi in the year 2001 and worked till the year 2004. Averments made in the petition further revealed that Pangi is a tribal and snow bound area and no effective work was available with the respondent w.e.f. November to May but the petitioner had worked for maximum days and the services of petitioner were dispensed with in the year 2004 without any reason and prior notice and no procedure had been followed by the respondent/department. It is alleged that petitioner had worked for maximum days during the months as per availability of work and petitioner is entitled for regularization as per policy of the government and law laid down by the Hon'ble Apex Court as well as the Hon'ble High Court of Himachal Pradesh. It is contended that respondent had not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) while disengaging the services of petitioner. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged persons junior to the petitioner and respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is stated that petitioner belongs to BPL family and completed 35 years of age and he has no source of income besides after termination of the services of petitioner, he had approached the respondent time and again but of no avail. He prayed for reinstatement in service along-with back wages, and other consequential service benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by

stating that petitioner was engaged as daily waged beldar in 2001who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. It is contended that the services of petitioner had not been terminated by the respondent but petitioner left the job of his own will. It is stated that the petitioner had not completed 160 days of continuous service in each calendar year and he did not fulfill the criteria as envisaged under Section 25-B of the Act and also petitioner did not complete criteria for regularization as petitioner had not worked for 160 days in each calendar year. It is denied that respondent had never violated the provisions of Section 25-G of the Act. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after eight years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Bal Krishan Kapil, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 15.1.2016 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during June, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of services of the petitioner by the respondent during June, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes

Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 2001 continuously worked till 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days and remained engaged from 2001 to May, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in June, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2004. No

reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 97 days in the year 2001, 93 days in 2002, 152 days in 2002 and 90 days in 2004 and thus a total of his service in 2001 to 2004 in 4 years he had worked for 432 days in his entire service period. Thus, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 90 and in the year 2003 petitioner had worked for 152 days and thus immediately in preceding 12 calendar months from the date of termination of services of petitioner, he had rendered service of 160 days and petitioner had fulfilled the criteria so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended that after petitioner's termination in June, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

16. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld.

counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

17. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society

Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference :

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service- Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

19. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as Tapash Kumar Paul vs. BSNL & another reported in AIR 2015 SC 357 wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed or that employees has superannuated or going to retire shortly and no period is left to his credit or where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only four situations when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. reported in AIR 2014 SC (Supp) 121, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014(3) Apex Court Judgments 652. I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the

judgment of Hon'ble Apex Court in Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment AIR 2015 SC supra, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in 2016 (1) Him. L.R. 502 titled as State of Himachal Pradesh and another vs. Chaman Singh relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. In 2014 (3) Apex Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of AIR 2015 SC 1373 titled as Mackinon Machenize & Company Ltd. vs. Mackinon Employees Union is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of Mackinon Machenize cannot be made applicable.

20. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 4 years and actually worked for 432 days as per mandays chart on record and that the services of petitioner were disengaged in June, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the

petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of 2013.

23. In view of foregoing discussion, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 36/2014
Date of Institution : 23.01.2014
Date of Decision : 29.11.2016

Smt. Shubha Rani w/o Shri Avtar Singh, r/o Village and Post Office Jalgran Tabba, Tehsil & District Una, H.P. ...*Petitioner.*

Versus

The Managing Director/Employer, M/S Sazler Electronics Limited, V.P.O. Behdala, Una-Chandigarh Road, Rakkar Colony, Tehsil and District Una, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR
For the Respondent : Sh. Himanshu Mishra, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

> "Whether termination of the services of Smt. Shubha Rani W/O Shri Avtar Singh, R/O V.P.O. Jalgran Tabba, Tehsil & District Una, H.P. w.e.f. 12-08-2012 by the Managing Director/ Employer, M/S Sazler Electronics Limited, V.P.O. Behdala, Una-Chandigarh Road, Rakkar Colony, Tehsil and District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition revealed that the services of petitioner who was working as operator in the assembly plant of the respondent company had been terminated on 12.8.2012. It is alleged that petitioner was engaged on 11.8.2006 as operator who continuously rendered service till her termination and during this period petitioner had worked for 240 days in each year. The grievance of petitioner remains that no charge sheet or show cause notice or personal hearing had been given and her service had been terminated arbitrarily in whimsical manner. It is alleged that it was necessary for the respondent company to have issued one month's notice in advance before termination or pay wages in lieu thereof and thus the termination is prima facie in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Similarly, petitioner has also not been paid compensation under Section 25-F(b) of the Act as compensation had neither been paid nor tendered making termination prima facie illegal. The action of the respondent/management in terminating service of petitioner as stated above is stated to be unfair labour practice. It also remains the case of petitioner that after her termination from service by respondent, the petitioner has remained unemployed throughout and accordingly, award is prayed to have been passed in favour of petitioner for reinstatement with full back wages and to any other relief petitioner is found entitled.

4. The respondent company contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, suppression of material facts that petitioner herself had absented from 16.12.2012 to 30.12.2012 and on 1.10.2013 respondent had sent a written letter vide which legitimate dues of petitioner were disbursed. On merits admitted that petitioner was engaged as Assembler in the Assembly/Packing Department from 11.8.2006 however denied that all remaining allegations as set up in the claim petition. It is alleged the behaviour of petitioner was indifferent in the factory and there were several complaints from co-workers regarding her misbehaviour and show cause notice was stated to have been served upon her on 6.8.2012 when she committed misconduct during working hours. It is alleged that after receiving show cause notice, petitioner at 3:30 PM on 11.8.2012 came to the office of Assistant Manager (Unit Incharge) and in the presence of co-workers, she misbehaved when again show cause notice was issued on 11.8.2012 calling upon her to explain her conduct. It is alleged that instead of filing reply to the show cause notice, petitioner started remaining absent from duty without intimation. It is also alleged that after show cause notice, petitioner threatened the Assistant Manager (Unit Inchart) of respondent company on 15.9.2012 through mobile no.9882151195 that she would commit suicide as her husband was torturing her on the incident of petitioner's misconduct in the factory whereupon a complaint was preferred to SHO Una about the act and conduct of petitioner and thereafter compromise had taken place between the parties at Police Station on 19.9.2012. On merits also it has been emphatically denied that services of petitioner were terminated rather she had resigned from job and she had taken all the dues which were paid to her vide cheque no.085772000000722 dated 20.12.2013 and said amount was also withdrawn by petitioner and nothing remains to be paid to her after resignation. It also remains the case of the respondent company that after she had obtained experience certificate from respondent, she had joined at Ranger Breweries Limited, Industrial Area, Mehatpur, Una Himachal Pradesh. The petition is accordingly, sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. On merits, admitted that she resigned from job but the same was obtained under pressure.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of compromise Ex. PW1/B and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri K. Pazhanivel alias Palani Plant Manager of the respondent company proved/tendered his affidavit Ex. RW1/A, Ex. RW1/B copy of bank statement and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 24.2.2015 for determination :

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 12.8.2012 is/was improper and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ... *OPP.*

3. Whether the claim petition is not maintainable in the present form? ...*OPR.*

4. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ...*OPR.*

5. Whether the petitioner has not approched the Court with clean hands as alleged. If so, its effect? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No
Issue No.2 : Discussed
Issue No.3 : Yes
Issue No.4 : Yes
Issue No.5 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, petitioner was employed by the respondent on 11.8.2006 as operator at the Assembly Plant of respondent company. It is also not in dispute that petitioner had continued to work till 12.8.2012. Stepping into witness box as PW1, petitioner has maintained that she had worked for more than 240 days in each year and her termination without any notice or compensation which was required to be paid under Section 25-F of the Act clearly vitiated the right of petitioner. In her affidavit Ex. PW1/A, petitioner has stated that petitioner had worked for more 240 days in each year preceding her date of actual termination. She has also maintained that no show cause notice was to be given to her prior to her termination. At the same time, no charge sheet is stated to have been issued. On the contrary, the claim of respondent remains that the petitioner of her own had voluntarily resigned after understanding consequences tendered resignation and received her all dues in full and final settlement. As such, it would be relevant to consider rival contentions of the parties on merits.

12. Cross-examination of petitioner clearly revealed that respondent company had paid Rs.8,748/- by crossed cheque issued to her from which had been received also by her. She has shown ignorance if an amount was credited in her bank account but from the statement of bank account Ex. RW1/B it is revealed that abovesaid was deposited and disbursed to petitioner. Significantly, petitioner admitted that she had obtained experience certificate on 1.10.2013 from respondent company and that she had resigned from service vide resignation letter Ex. R1. Not only this, she has admitted the plea of respondent which was so stipulated in Ex. R6 her resignation letter in which she has admitted to have remained absent from duty and that she was leaving the job from company of her own will, without any force or coercion. From the contents of Ex. R6, plea of petitioner that she was forced to resign gets falsified. RW1 Shri K. Pazhanivel alias Palani, Plant Manager has also proved the case of the respondent by tendering his affidavit Ex. RW1/A. Cross-examination of respondent shows that petitioner remained absented from duty without permission and remaining absence from duty was misconduct. He has further disclosed in the cross-examination that the show cause notices Ex.R1 to R3 were given to petitioner but she neither replied nor acknowledged these notices. This fact further finds support from cross-examination of PW1 in which she admitted that show cause notice Ex. R1 was given to her but she did not reply the same. She has also not stated that notice Ex. R2 was not served upon her. She has further admitted on oath that the contents of notice Ex. R2 dated 14.8.2012 was initially in Hindi and later

on request of petitioner notice in English was given but she did not reply for reasons best known to her. Not only this, petitioner has admitted that Ex. R3 dated 30.8.2012 was registered letter Ex. R4 was sent through post but she had refused to receive the registered letter. She has also admitted that experience certificate Ex. R5 was issued by the respondent company and that immediately after leaving the job with respondent company she got job in M/s. Ranger Breweries which goes to show she was unemployed even after working with respondent company @ Rs.4500/- per month. From aforestated evidence on record, inference of service of petitioner having been terminated without serving any show cause notice cannot be drawn as petitioner appears to be attending office of her own and when show cause notices Ex. R1 to R4 were issued, she never replied and explained her position.

13. Ld. AR for petitioner has also contended that no inference of abandonment of job by petitioner could be raised from evidence of respondent company but in view of her specific admission that she had taken all dues and left the respondent company of her own clearly belies the stand of petitioner. As such, it is held that petitioner has resigned vide resignation letter Ex. R6 without any force or coercion at the instance of respondent company and had taken all dues and joined another company as stated. In view of foregoing plea of respondent company that petitioner had abandoned job cannot be legally sustained. In 2015 (4) SCT 60 Service Cases Today and the relevant paras of the judgment are produced below for reference:

> "Constitution of India, 1950, Article 225. Industrial Disputes Act, 947, Section 25F. Compliance of Impugned order of reinstating respondent no.2. Termination of service without making compliance of section 25F of the Act. Industrial dispute raised. Defence of Management was that the workman had himself abandoned his job by remaining absent. Held, neither any charge sheet issued by petitioner nor sent any notice to the workman for holding enquiry nor conducted any enquiry nor made compliance of Section 25F of the Act. Act of management not bonafide. Plea of abandonment not effective. Impugned order held sustainable. Petition dismissed". [Paras 4 and 5]

14. Ld. AR for petitioner has placed reliance upon the judgments of Kulwinder Singh vs. State of Punjab etc. reported in 2015 (3) SCT 644 and Factories Journal Reports [Vol.88] 516 titled as Sita Ram vs. Labour Court, Patiala and others. Ld. Authorized Representative for petitioner relied upon the aforestated judgments which are not applicable to the present case having different facts. Once it is established that petitioner of her own voluntarily resigned from job vide resignation letter Ex. P6 dated 1.10.2013 in which petitioner had explained that she of her own had tendered resignation and she was not interested to do job with the respondent company clearly shows that she had resigned voluntarily and not by force or corceion. Not only this, petitioner had obtained experience certificate from respondent company on 01.10.2013 prior to joining other employer as stated above. On this score also, her plea that she was made to resign forcibly or under pressure gets belied. Both these issues are decided in favour of respondent and against the petitioner.

ISSUE NO. 3

15. Since petitioner is held to have resigned voluntarily and taken all the dues from respondent company, it does not lies in her mouth that she was illegally terminated from service. In the question illegal termination does not arise in this case as highlighted in foregoing paras. Issue is accordingly answered in negative against petitioner and in favour of respondent.

ISSUES NO. 4 & 5

16. In view of the findings on issues no.1 and 2, it appears that the petitioner has suppressed the material facts from the Court as well as petitioner had not come to the Court with

clean hands as the petitioner had not been found a truthful claimant. She has been also shown to be absent from duty. She has not given reply to the show cause notices Exts. R-1, R-2 and R-3, issued by the respondent/company regarding her absence from duty. It is not shown that the services of the petitioner were terminated by the respondent. Rather she had been found to be absent from duty herself. Therefore, in these circumstances, she is not entitled to any relief, therefore, both these issues are decided against the petitioner and in favour of the respondent.

RELIEF

17. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 323/2015
Date of Institution : 21.07.2015
Date of Decision : 29.11.2016

Shri Desh Raj s/o Shri Norang, r/o Village Khallu, P.O. Diur, Tehsil Salooni, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Salooni, Tehsil Salooni, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Desh Raj S/O Shri Norang, R/O Village Khallu, P.O. Diur, Tehsil Salooni, District Chamba, H.P. before the Executive

Engineer, H.P.P.W.D. Division Salooni, Tehsil Salooni, District Chamba, H.P. vide demand notice dated 23.07.2009 regarding his alleged illegal termination of service during year, 2001 suffers from delay and latches? If not, Whether termination of the services of Shri Desh Raj S/O Shri Norang, R/O Village Khallu, P.O. Diur, Tehsil Salooni, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Salooni, Tehsil Salooni, District Chamba, H.P. during year, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of June, 1985 who continuously worked till April, 1987 with the respondent/department. Averments made in the petition further revealed that the services of petitioner interrupted by giving him fictional breaks although petitioner had worked for 240 days in each calendar year as well as benefits of regularization since the juniors of petitioner had been retained in service by the respondent and thereafter respondent had illegally terminated the services of petitioner in May, 1987. It is further stated that the services of petitioner had been again reengaged in the month of June, 1994 and he had worked upto August, 1994 and thereafter the services of petitioner were illegally terminated by the respondent/department and petitioner had filed O.A. before the H.P. Hon'ble Administrative Tribunal. As per direction of Hon'ble Administrative Tribunal the respondent had reengaged the petitioner in September, 1994 and he had worked till May/June, 1996. It is alleged that the respondent started giving break in service of petitioner from time to time and engaged till April, 2001 and the respondent/department had finally terminated the services of petitioner on May, 2001 whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be arbitrary, unjustified and principle of natural justice but too violation of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 52 persons who were junior to petitioner and joined service from October, 1992 to 2006. In the end of month of May, 2001 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of May, 2001 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/ retrenchment by the respondent in the month of May, 2001. He further prayed for reinstatement in service w.e.f. month of May, 2001 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1985 to May, 2001 be counted 240 days continuous service and regularization

of the service of petitioner w.e.f. 01.01.1995 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhaya vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that the services of petitioner had been engaged in the month of June, 1985 who remained engaged till April, 1987 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is stated that the services of petitioner had been initially engaged in June, 1985 as daily waged beldar and he worked for 142 days in the year 1985, 174 days in 1986, 80½ days in 1987 and thereafter petitioner had not returned for from 1988 to 1993. It is further stated that in the year 1994 petitioner had worked for 81 days, 303 days in 1995, 207 days in 1996, 125 days in 1997, 169 days in 1999, 77 days in 2000 and 57 days in 2001 and thereafter petitioner had abandoned the job of his own will without intimating the respondent/ department. It is alleged that as per mandays chart petitioner had worked intermittently as per his own convenience and will. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons junior to him were not retained in service after termination of the services of petitioner. It is contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. Mark-A1 to A6 copies of representations, Ex. PW1/B copy of letter dated 21.5.2011, Ex. PW1/C copy of appeal dated 20.6.2011, Ex. PW1/D copy of letter dated 15.10.2011, Ex. PW1/E copy of letter dated 5.3.2014 Exts. PW1/F1 to F5 copies of screening committee report, Exts. PW1/F6 to F45 copies of mandays chart of co-workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.S. Pathania, the then Executive Engineer, HPPWD Division Salooni as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B mandays chart of petitioner Ex. RW1/C copy of seniority list of daily waged workers of HPPWD Division Salooni and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.11.2015 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23.07.2009 qua his termination of service during year 2001 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent during year, 2001 is/was illegal and unjustified as alleged? ...*OPP.*

11. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*

12. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1985 who continuously worked till 2001 with the respondent/ department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 240 days and remained engaged from 1985 to April, 2001. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in April, 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had

moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.
14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 142 days in the year 1985, 175 days in 1986, 80 ½ days in 1987, 81 days in 1994, 303 days in 1995, 207 days in 1996, 125 days in 1997, 169 days in 1999, 77 days in 2000 and 57 days in 2001 and thus a total of his service in 1985 to 2001 in 10 years he had worked for 1416 ½ days in his entire service period. As per mandays chart Ex. RW1/B revealed that claimant/petitioner is shown to have worked for 134 days in a year preceding his date of termination and thus provisions of Section 25-F of the Act would not apply in this case. As the petitioner had appointed in 1985 and from 1988 to 1993 petitioner was not in service. Be it noticed that petitioner had not worked for more than 240 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for two months 57 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 240 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed 1992 to 2006 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. Ex. PW1/F1 to PW1/F45 are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter. As per seniority list Ex. RW1/C stipulated that Madho Ram at serial no.8, Rattan Chand at 14, Dharam Chand at 15, Sita Ram at 16 and Kewal had been appointed in the year 1996 respectively whereas petitioner had joined in June, 1985. That being so it appears to violation of Section 25-G of the Act. In so far as seniority of 45 employees as reflected Ex. PW1/F1 to Ex. PW1/F45 these official have worked regularly and were consequently regularized. The main crux of the problem with regard to violation of Section 25-G for which petitioner was required to establish that some juniors were appointed later and as per seniority list Ex. RW1/C it is evident that several persons as referred to above had joined at belated stage

whereas the petitioner was continued in service and he was not regularized by the respondent/ department. As such, during regularization of other co-workers petitioner could be given an opportunity of being heard by competent authority hence this court left with no option but to hold that respondent had violated the provisions of Section 25-G and H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as on compassionate grounds as reflected in the seniority list Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to seniority list Ex. RW1/C were primarily on the basis of court orders as well as on compassionate ground would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 240 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in the year 2001, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that „term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court

titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference :

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and

Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 10 years and actually worked for 1416½ days as per mandays chart on record and that the services of petitioner were disengaged in the year 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about eight years i.e. demand notice was given on 23.07.2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 49 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013

(139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, instead of back wages and reinstatement, a lump-sum compensation of Rs.1,75,000/- (Rupees One Lakh Seventy Five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,75,000/- (Rupees One Lakh Seventy Five thousand only) to the petitioner in lieu of the reinstatement in services as well as back wages and the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 212/2015
Date of Institution : 25.05.2015
Date of Decision : 29.11.2016

Shri Hem Raj s/o Shri Sahnu Ram, r/o Village Daliund, P.O. Bhadela, Tehsil Salooni, District Chamba, H.P. ...*Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division Salooni, Tehsil Salooni, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication :

"Whether the industrial dispute raised by the worker Shri Hem Raj S/O Shri Sahnu Ram, R/O Village Daliund, P.O. Bhadela, Tehsil Salooni, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division Salooni, Tehsil Salooni, District Chamba, H.P. vide demand notice dated nil-received on 25.11.2004 regarding his alleged illegal termination of service during, July, 1998 suffers from delay and latches? If not, Whether termination of the services of Shri Hem Raj S/O Shri Sahnu Ram, R/O Village Daliund, P.O. Bhadela, Tehsil Salooni, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Salooni, Tehsil Salooni, District Chamba, H.P. during July, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of December, 1994 who continuously worked till July, 1998 with the respondent/ department. Averments made in the petition further revealed that the services of petitioner interrupted by giving him fictional breaks although petitioner had worked for 240 days in each calendar year as well as benefits of regularization since the juniors of petitioner had been retained in service by the respondent and thereafter respondent had illegally terminated the services of petitioner in July, 1998. It is alleged that the respondent started giving break in service of petitioner from time to time and engaged till 1998 and the respondent/department had finally terminated the services of petitioner on July, 1998 whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be arbitrary, unjustified and principle of natural justice but too violation of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that seniority list of daily wage

workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 40 persons who were junior to petitioner and joined service from October, 1995 to 2006. In the end of month of July, 1998 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of July, 1998 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of July, 1998. He further prayed for reinstatement in service w.e.f. month of July, 1998 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1994 to July, 1998 be counted 240 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2003 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that the services of petitioner had been engaged in the month of December, 1994 who remained engaged till July, 1998 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. It is stated that the services of petitioner had been initially engaged in December, 1994 as daily waged beldar and petitioner had worked for 9 ½ days in the year 1994, 200 days in 1995, 268½ days in 1996, 337 days in 1997 and 192 days in 1998 and thereafter petitioner had abandoned the job of his own will without intimating the respondent/department. It is alleged that as per mandays chart petitioner had worked intermittently as per his own convenience and will. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons junior to him were not retained in service after termination of the services of petitioner. It is contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. Mark-A1 to A6 copies of representations, Ex. PW1/B copy of letter dated 21.9.2007, Ex. PW1/C appeal dated 15.7.2008, Ex. PW1/D copy of order dated 10.4.2012, Ex. PW1/E copy of representation dated 31.8.2014, Ex. PW1/F copies of reminder dated 2.10.2014, Ex. PW1/G copy of vacancy position, Exts. PW1/H1 to H5 copies of screening committee report, Exts. PW1/H6 to H45 copies of seniority list of co-workers and closed

evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.S. Pathania, the then Executive Engineer, HPPWD Division Salooni as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B mandays chart of petitioner Ex. RW1/C copy of seniority list of daily waged workers of HPPWD Division Salooni, Ex. P1 to Ex. P3 copies of letter dated 10.9.2014, 1.10.2014, 14.10.2014 respectively, Ex. P4 copy of statement of Shri Hem Raj, Ex. P5 copy of letter dated 14.11.2014 and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.11.2015 for determination :

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during July, 1998 by respondent suffers from vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent during July, 1998 is/was illegal and unjustified as alleged? ...*OPP.*

13. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

14. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed
Issue No.4 : No
Relief. : Petition is partly allowed awarding compensation Rs.1,20,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 who continuously worked till 1998 with the respondent/ department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt.

does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 240 days and remained engaged from 1994 to July, 1998. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 1998 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 1998. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 9½ days in the year 1994, 200 days in 1995, 268½ days in 1996, 337 days in 1997 and 192 days in 1998 and thus a total of his service in 1994 to 1998 in 5 years he had worked for 1007 days in his entire service period. As per mandays chart Ex. RW1/B petitioner is shown to have worked for 328 days preceding 12 months from the date of his termination. Since petitioner has worked for more than 230 days in preceding 12 months, he would entitled protection envisaged under Section 25-B of the Act. As such, respondent was required to issue show cause notice before terminating his services as petitioner had worked for more than 240 days of work. At the same time notice was to be issued and compensation was also to be paid to the petitioner which has not been

so done by the respondent/department in this case. This fact has been admitted by RW1 in cross-examination supporting claim of petitioner. Since no notice as required under Section 25-F of the Act was given respondent is held to have violated Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed 1996 to 2006 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/H6 to PW1/F40 are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter. Ex. RW1/C is the seniority list of daily wage workers as stipulated in seniority list Ex. RW1/C is shown to have joined in July 1995 and thereafter. As such, before engaging new faces, respondent was required to issue notice for reemployment to petitioner but in this case respondent/department had not done. As such having appointed workers who were junior as stated above respondent had also violated the provisions of Sections 25-G and 25 H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of Central Bank of India vs. S. Satyam, 1996 (5) SCC 419 in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as on compassionate grounds as reflected in the seniority list Ex. RW1/C. Thus, plea that persons were directed to be appointed in pursuance to seniority list Ex. RW1/C were primarily on the basis of court orders as well as on compassionate ground would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 240 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in the year 1998, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765 in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in Deepali Gundu Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the

relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled Raghubir Singh vs. General Manager, Haryana Roadways, Hissar reported in 2014 Lab IC 4266 (SC) and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
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> 13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
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> 14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—
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> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing

industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that

termination of petitioner in this case took place on 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in 2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125], the relevant para of the judgment are produced below for reference :

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service-Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to Gitam Singh's case reported in 2013 (136) FLR 893 (SC) titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon□ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after six years. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and

thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 1007 days as per mandays chart on record and that the services of petitioner were disengaged in the year 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about six years i.e. demand notice was given in the year 2009. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment 2013 (139) FLR 25 (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in 2014 titled as Raghubir Singh's case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year 2013 i.e. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in AIR 2015 SC 3473.

21. In view of foregoing discussion, instead of back wages and reinstatement, a lump-sum compensation of Rs.1,20,000/- (Rupees One Lakh Twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees One Lakh Twenty thousand only) to the petitioner in lieu of the reinstatement in services as well as back wages and the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K.K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 346/2014
Date of Institution : 16.12.2014
Date of decision : 29.11.2016

Shri Sunku Ram s/o Shri Sorma Ram, r/o Village Reya, P.O. Bakani, Tehsil & District Chamba, H.P. ...*Petitioner.*

Versus

Deputy Director of Agriculture, Chamba, District Chamba, H.P. ...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication :

"Whether transfer of the services of Sh. Sunku Ram S/O Sh. Sorma Ram, R/O Village Reya, P.O. Bakani, Tehsil & District Chamba, H.P. by the i) Deputy Director (Agriculture) Chamba on 16.8.1997 to Soil Conservation Department, Chamba and thereafter by ii) The Sub-Divisional Soil Conservation Officer Chamba, Distt. Chamba to Project Officer, DRDA Chamba during October, 2002 and thereafter again transfer of his service by the iii) Project Officer, DRDA Chamba vide orders dated 01.2.2011 to O/O The Deputy Director, Agriculture, Chamba wherein his joining was not accepted by the Deputy Director Agriculture, Chamba on 23.2.2011 and finally transferring his service to Gram Panchyat Bakani, Tehsil & Distt. Chamba, is legal and justified? If not, what relief including seniority, service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts of the claim as revealed in claim petition show that petitioner was engaged as Chowkidar at Bakani Nursery in January, 1995 by Deputy Director, Agriculture Chamba where he worked continuously till the nursery in question was handed over to Soil Conservation

Department on 16.8.1997 along with the service of petitioner who was paid wages by Sub Divisional Soil Conservation Officer, Chamba till October, 2002 and again the nursery in question was handed over to Project Officer, DRDA along-with assets and liabilities where petitioner had also continued to work on daily wages without any break. It is alleged that respondent no.1 vide order no.DRDA-CBA-14136-37 dated 1.2.2011 had ordered petitioner to report to Deputy Director Agriculture for further assignment with immediate effect and also ordered nursery at Bakani transferred back to Deputy Director Agriculture along-with assets and liabilities. It further transpires from the claim petition that petitioner was directed to report for duty before Deputy Director Agriculture Chamba but his joining was not accepted by Deputy Director Agriculture. It is alleged that Deputy. Director of Agriculture Himachal Pradesh vide letter no.Agr.(SC) H(F)10-16/2000-II-264 dated 21.4.2011 informed the respondent that at that stage, it would not be possible for their department to take over the Bakani nursery as project in question had been terminated in 2002 and that no further funds were available with department to meet out the recurring costs. It is also alleged that petitioner has not paid wages w.e.f. February, 2011 till date although he was working continuously and has not been regularized in service despite completion of 10 years of continuous service i.e. working 240 days in each calendar year. Claiming that as per directions of Hon□ble Apex Court reported in Mool Raj Upadhya vs. State of H.P. & Ors. 1994(2) SLR 377, it has been contended that after completion of 10 years of continuous service, petitioner was entitled not only for regularization but also for consequential benefits in terms of regularization policy of State Government after 10 years of service but his services were not regularized by the respondent, who had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is also alleged that non payment of wages and non regularization of service of petitioner by the respondent is without any notice envisaged under Section 25-F of the Act. Claiming to have worked since 1995 as Chowkidar at Bakani Nursery for more than 240 days in a year and petitioner has prayed for wages w.e.f. February, 2011 and regularization of his service w.e.f. the date of completion of eight years of continuous service. A demand notice was served but the matter could not be reconciled before Conciliation Officer. Accordingly, petitioner claims that he be ordered to be paid wages from February, 2011 and regularization of his service on the post of chowkidar w.e.f. date of daily wage as per policy of the Government with consequential benefits. The petitioner also prays transferring of services of petitioner finally to Gram Panchyat, Bakani as previous transfers were neither legal nor justified and the petitioner be ordered to be granted relief of seniority, service benefits with compensation by the respondent.

4. The respondent contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability. On merits admitted that petitioner was engaged as Chowkidar in July, 1995. It is claimed that petitioner had worked intermittently with the respondent/department from 1995 to April, 1996 who visited his place of work at his own sweet will and did not work in the year 1997. It has been emphatically denied that the services of petitioner had been handed over to Soil Conservation Department when the Bakani nursery was handed over to said department. It further transpires from the reply that respondent no.1 had requested for guidelines to the Director of Agriculture, Himachal Pradesh dated 11.3.2011 and vide letter no. Agr. SC CBA NWDPRA (Gen) 6/2002 dated 27.11.2002 nursery at Bakani had been handed over to the respondent no.3. It has been specifically alleged that petitioner was not handed over to respondent no. 3 along-with nursery as claimed by him as infact petitioner had left the work at his own sweet will. It is also denied that petitioner has not been paid wages since February, 2011 rather from record of respondent, petitioner was shown to have worked on contract basis and the wages for said period had already been paid to him who did not complete 240 days in each calendar year as the petitioner has worked on contract basis. As such, it is stated that as per record petitioner is stated to have worked on contract basis from November, 2002 to May, 2011 who was neither entitled for wages nor regularization in service. It is further stated that the judgment of Hon'ble Apex Court titled as Mool Raj Upadhaya vs. State of H.P. & Ors. is not applicable to case in hand besides no juniors have

been engaged at the place of petitioner and that the services of petitioner was not terminated by the respondent. As such, the respondent claims to have not violated the provisions of Section 25-F, 25-G and 25-H of the Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 11.3.2011, Mark-A copy of letter dated 27.11.2002, Mark A1 copy of letter dated 27.11.2002, Ex. Pw1/C copy of letter dated nil, Mark-B copy of letter dated 2.8.2002, copy of letter dated 13.4.2011 Mark-C, copy of letter dated 16.10.2002 Mark-D, copy of letter dated 1.2.2011 Mark-E, copy of letter dated 5.3.2011 Mark-F, Copy of letter dated 21.2.2003 Mark-G and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shiv Kumar Sharma, Dy. Director of Agriculture Chamba (HP) as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of letter dated 11.3.2011, Ex. RW1/C copy of letter dated 27.11.2002, Ex. RW1/D copy of letter dated 27.22.2002, Ex. RW1/E to Ex. RW1/G copies of letter dated nil, Ex. RW1/H copy of letter dated February, Ex. RW1/I copy of letter dated 21.2.2003, Ex. RW1/J copy of letter dated 5.3.2011, Ex. RW1/K copy of office order dated 1.2.2011, Ex. RW1/L copy of letter dated 116.10.2002, Ex. RW1/M copy of letter dated 13.4.2011, Ex. RW1/N copy of letter dated 2.8.2002, Ex. RW1/O copy of letter dated nil Ex. RW1/P copy of mandays chart and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 22.9.2015 for determination :

1. Whether transfer of the services of petitioner by the Deputy Director (Agriculture) Chamba thereafter by The Sub Divisional Soil Conservation Officer Chamba, Distt. Chamba again transfer by the Project Officer, DRDA Chamba and finally transferring petitioner to Gram Panchyat Bakani, Tehsil & Distt. Chamba is/was illegal and unjustified, as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to relief as prayed? ...*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No
Issue No.2 : No
Issue No.3 : Yes
Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is pertinent to mention here that there exist vast difference between reference received from appropriate government and relief claimed by the petitioner by filing claim petition on record. It may not be erroneous to mention here that this court is to confine its findings on reference so received and it cannot travel beyond by the reference. A bare glance at the reference would show that petitioner was factually aggrieved with his transfer to office of Deputy Director Agriculture Chamba thereafter on 16.8.1997 Soil Conservation Department, Chamba and thereafter by Sub-Divisional Soil Conservation Officer Chamba, District Chamba to Project Officer, DRDA Chamba in 2002 and vide order dated 1.2.2011 and thereafter to Deputy Director Agriculture Chamba from where he was denied joining duty and finally transferred to Gram Panchyat Bakani. It is equally important to mention here that Deputy Director Agriculture Chmba had refused to give joining to the petitioner on reference of Project Officer DRDA stipulating the reasons for doing so. It would be relevant to refer to Ex. RW1/M letter from Director of Agriculture Himachal Pradesh to Deputy Commissioner-cum-Chief Executive Officer, DRDA, Chamba in which it was stated that all assets and liabilities were required to be handed over to Watershed Committee after completion NWDPRA projects and that two nurseries had been handed over to DRDA Chamba on special request of DRDA. Ex. RW1/M is transfer of nursery which does not talk about transfer of petitioner in any manner. Prior to it letter dated 2nd August, 2002 was written by Deputy Director Agriculture in which proposal for transfer for both the nurseries were sent which was declined by the DRDA and after that the nursery of Bakani was stated to be not handed over to DRDA as the project had terminated in 2002.

12. It may not be erroneous to mention here that neither petitioner nor respondent have proved on record any document reflecting transfer of petitioner from one nursery to other nursery. Rather there is no transfer order of petitioner on record. Even if nurseries had been transferred with assets and liabilities, it did not mean that officials of nurseries were transferred. Certainly, burden of proof in this regard was upon petitioner. Be it noticed that DRDA vide letter Ex. RW1/O has specifically alleged in letter addressed to Pradhan Gram Panchyat Bakani with cheque amounting to Rs. 20,000/- was sent as honorarium for Sunku Ram w.e.f. February, 2011 to June 2011 @ Rs.4000/- per month and that his services infact petitioner on resources of Panchyat. This cheque was encashed by petitioner which clearly suggest that he was paid honorarium and not wages as claimed by him, the amount so received is honorarium of Rs.20,000/- and not wages. Prior to it, also he appears to worked only on contract basis. The terms of assets and liabilities of nursery and his transfer to subsequent department as has come in the evidence could not be construed to mean that petitioner was also transferred. Ex. RW1/1 further shows payment of Rs.7500/- was paid to Sunku Ram. The said entry was reiterated in Ex. RW1/M showing payment of Rs.7500/- to petitioner. Ex. RW1/F is the bill of Sunku Ram from April, 2002 to August 2002 @ Rs.1500/- aggregating to a sum of Rs.7500/-. The evidence on record clearly shows that petitioner was working on different amount as remuneration for his work and now in a garb having worked for different nursery for several years he claimed benefit for regularization and wages from February, 2011 till date which could not be granted in view of the fact that petitioner had not challenged the transfer order(s) as such in absence of which it would be unsafe to hold that these orders were illegal and unjustified.

13. Significantly, petitioner had worked from 1997 till 2011 had never challenged the order before any authority rather his case does not remain that he ever felt aggrieved with the transfer(s) in preceding 14 years. It seems that the services of petitioner were transferred to different departments and petitioner continued to work independently after seeking work either in the shape of honorarium or remuneration for his work. Thus, relief as claimed by petitioner qua regularization and completing of eight years service is not tenable as there is no corresponding evidence on record and nothing has been proved on records showing that transfer of petitioner from Deputy Director Agriculture to Soil Conservation Department and then again Deputy Director who refused to joining and finally petitioner was transferred to Gram Panchyat Bakani. That being so,

petitioner could not be entitled for regularization of service as claimed by him as there is nothing in evidence to show that petitioner had been removed from service without notice under Section 25-F of the Industrial Disputes Act, 1947. Similarly, proof of mandays chart having worked from 1995 does not confirm any right in this claim petition as it does not show transfer of petitioner in any manner. Thus transfer orders as highlighted no reference of the appropriate govt. cannot be stated to illegal or unjustified. In view of the foregoing discussion, issue no.1 is answered in negative that transfers of petitioner to various departments which was not illegal and unjustified rather petitioner is held to have never been transferred along-with assets and liabilities of the nursery and for said reason issue no.2 is answered in negative holding that petitioner is not entitled for service benefits and also on this score petition is held to be not maintainable. Hence, issue no.3 is decided in favour of respondent and against the petitioner.

RELIEF

14. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2016.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है